



भारत का राजपत्र

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No. 15] NEW DELHI, APRIL 6—APRIL 12, 2014, SATURDAY/CHAITRA 16—CHAITRA 22, 1936

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 31 मार्च, 2014

का.आ. 1168.—केन्द्र सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अतिरिक्त जिला एंव सत्र न्यायाधीश, लुधियाना पंजाब में दिल्ली विशेष पुलिस स्थापना (के.अ. ब्यूरो) द्वारा संस्थापित मामला आरसी 10(एस)/2002/सीबीआई/एससी-II/नई दिल्ली (बाबा दर्शन सिंह एवं अन्य) तथा इससे सम्बद्ध या इसी संब्यवहार में अन्य मामलों में उपस्थित होने के लिए श्री एच. एस. ओबरॉय, अधिवक्ता को विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/6/2014-एवीडी-II]

राजीव जैन, अवर सचिव

**MINISTRY OF PERSONNEL, PUBLIC
GRIEVANCES AND PENSIONS**
(Department of Personnel and Training)

New Delhi, the 31st March, 2014

S.O. 1168.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal

Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri H.S. Oberoi, Advocate as Special Public Prosecutor for appearing in case RC (S)/2002/CBI/SC-II/New Delhi (Baba Darshan Singh & others) instituted by the Delhi Special Police Establishment (C.B.I.) in the Additional District & Sessions Judge, Ludhiana Punjab and other matter connected therewith and incidental thereto.

[F. No. 225/6/2014-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 28 मार्च, 2014

का.आ. 1169.—आंध्र प्रदेश पुनर्गठन अधिनियम, 2014 (2014 का 6) की धारा 80 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्र सरकार एतद्वारा निम्नलिखित अधिकारियों की एक सलाहकार समिति का गठन करती है:

1. श्री प्रत्यूष सिन्हा, अ.भा.से. (बीएच: 69)	अध्यक्ष
2. मुख्य सचिव, आन्ध्र प्रदेश सरकार	सदस्य
3. विशेष सचिव (आंतरिक सुरक्षा), गृह मंत्रालय, नई दिल्ली	सदस्य

4. महानिरीक्षक (वन)–सह-विशेष सचिव,
पर्यावरण एवं वन मंत्रालय, नई दिल्ली सदस्य

5. अपर सचिव (सेवा एवं सतर्कता),
कार्मिक और प्रशिक्षण विभाग, नई दिल्ली सदस्य-सचिव

2. समिति के विचारार्थ निम्नलिखित विषय होंगे :-

(i) इस अधिसूचना की तिथि के एक सप्ताह के भीतर समिति द्वारा निर्धारित उद्देश्यों और पारदर्शी सिद्धांतों के आधार पर दो परवर्ती राज्यों नामतः आंध्र प्रदेश और तेलंगाना की तीनों अखिल भारतीय सेवाओं (अभासे) अर्थात् भा.प्र.से., भा.पु.से. एवं भा.व.से. के संवर्ग बल के निर्धारण से संबंधित समुचित सिफारिशें करना।

(ii) संवर्ग बल और सिद्धांतों के निर्धारण के संदर्भ में, इसको तीनों अ.भा.से. की संबंधित वेबसाइट पर अपलोड करने के एक सप्ताह की अवधि में और उसके पश्चात्, पणधारी (पणधारियों) द्वारा दिए गए किसी आवेदन (प्रतिवेदनों)/टिप्पणी/टिप्पणियों पर विचार करना एवं अपना मत रखना और उसके बाद एक सप्ताह की अवधि के भीतर इन प्रतिवेदनों के माध्यम से उठाए गए मुद्दों के संबंध में उचित सिफारिशें करना।

(iii) इस अधिसूचना की तिथि से तीन सप्ताह के भीतर दो परवर्ती राज्यों नामतः आंध्र प्रदेश और तेलंगाना के बीच आंध्र प्रदेश के वर्तमान संवर्ग के तीनों अखिल भारतीय सेवाओं अर्थात् भा.प्र.से., भा.पु.से. एवं भा.व.से. के अधिकारियों के आवंटन/वितरण हेतु उद्देश्य एवं पारदर्शी मानदंडों की सिफारिश करना।

(iv) उपर्युक्त बिंदु संख्या (ii) में उल्लिखित अनुसार संवर्ग बल के निर्धारण के अनुमोदन के तत्काल बाद अथवा उपर्युक्त बिंदु संख्या (iii) में उल्लिखित अनुसार सक्षम प्राधिकारी द्वारा आवंटन/वितरण हेतु मानदंडों के अनुमोदन के पश्चात्, जो भी बाद में हो, वर्तमान आंध्र प्रदेश राज्य से गठित होने वाल परवर्ती राज्यों नामतः आंध्र प्रदेश और तेलंगाना हेतु उपर्युक्त पैरा (ii) में उल्लिखित अनुसार समिति की अंतिम सिफारिश के अनुसार सक्षम प्राधिकारी द्वारा अनुमोदित अनुसार तीनों अखिल भारतीय सेवाओं के कुल प्राधिकृत बल को सीधी भर्ती कोटा और पदोन्तति कोटा-वार; सामान्य, अन्य पिछड़ा वर्ग, अनुसूचित जाति और अनुसूचित जनजाति-वार तथा आंतरिक एवं बाह्य वर्ग-वार पुनः विभाजित करना।

(v) उपर्युक्त बिंदु संख्या (iv) में उल्लिखित अनुसार प्राधिकृत संवर्ग बल के पुनर्विभाजन के पूरा होने के एक सप्ताह के भीतर सक्षम प्राधिकारी द्वारा अनुमोदित आवंटन मानदंडों के अनुसार अ.भा.से. के अधिकारियों हेतु विशिष्ट व्यक्तिगत आवंटन/वितरण की सिफारिश करना।

(vi) उपर्युक्त बिंदु संख्या (v) में उल्लिखित अनुसार व्यक्तिगत आवंटन/वितरण के संबंध में सभी के लिए निष्पक्ष एवं एक जैसा वर्ताव सुनिश्चित करने के लिए प्रतिवेदन आमंत्रित करते हुए इसे एक सप्ताह तक अखिल भारतीय सेवा के संबंधित संवर्ग नियंत्रण प्राधिकारी की वेबसाइट पर अपलोड करने के पश्चात् इस संबंध में किसी अखिल भारतीय सेवा अधिकारी (अधिकारियों), जो इससे

प्रभावित हैं, द्वारा किए गए किसी प्रतिवेदन (प्रतिवेदनों) पर पणधारियों से प्रतिवेदन प्राप्ति की अंतिम तारीख से एक सप्ताह के भीतर उचित सिफारिशें, यदि कोई हों, करना।

[फा. सं. 13013/1/2013-एआईएस-(I)]

पी.के. दास, संयुक्त सचिव

New Delhi, the 28th March, 2014

S.O. 1169.—In exercise of the powers conferred by sub-section (1) of Section 80 of Andhra Pradesh Re-organization Act, 2014 (6 of 2014), the Central Government hereby constitutes an Advisory Committee comprising of the following:

1. Shri Pratyush Sinha, IAS (BH:69)	Chairman
2. Chief Secretary, Govt. of Andhra Pradesh	Member
3. Special Secretary (IS), MHA, New Delhi	Member
4. IG (Forests)-cum-SS, MoE&F, New Delhi	Member
5. Additional Secretary (Services & Vigilance), DOPT, New Delhi.	Member-Secretary

2. The terms of reference for the Committee would be as follows :-

(i) To make suitable recommendations regarding determination of the cadre strength of the three All India Service (AIS), namely, IAS, IPS & IFOS of the two successor States namely Andhra Pradesh and Telangana on the basis of objective and transparent principles to be evolved by the Committee within one week from the date of this notification.

(ii) To consider and take a view on any representation (s)/comment(s) made by the stakeholder(s) with reference to such determination of cadre strength and principles, after the same is placed on the respective website of the three AIS for period of one week and thereafter make suitable recommendations regarding the issues that any may be raised through these representations, within a period of one week.

(iii) To recommend objective and transparent criteria for the allocation/distribution of personnel belonging to the three All India Services, i.e. IAS, IPS & IFoS & borne on the existing cadre of Andhra Pradesh between the two successor States namely Andhra Pradesh and Telangana within three weeks from the date of this notification.

(iv) To further subdivide the total authorized strength of the three All India Services as approved by the Competent Authority after final recommendation of the

Committee as mentioned at Para (ii) above, into Direct Recruitment Quota and Promotion Quota wise; Unreserved, OBC, SC and ST wise and Insider and Outsider wise for the two successor States namely Andhra Pradesh and Telangana arising out of the existing State of Andhra Pradesh immediately after approval of the determination of cadre strength, as mentioned at Point No. (ii) above or approval of the criterion for allocation/distribution by the Competent Authority, as mentioned at Point No. (iii) above, whichever is later.

(v) To recommend specific individual allocation/distribution of AIS officers in accordance with the allocation guidelines as approved by the competent authority, within one week after completion of the further sub-division of authorized cadre strength, as mentioned at Point No. (iv) above.

(vi) To consider any representation(s) made by an All India Service Officer (s) who is/are affected by such recommendation regarding individual allocation/distribution, as mentioned at point No. (v) above after the same is placed in the websites of the respective Cadre Controlling Authority of AIS, for one week, inviting representations, in order to ensure a fair and equitable treatment to all and make appropriate recommendations, if any, within one week from the closure of accepting representations from stakeholders.

[F. No. 13013/1/2013-AIS(I)]

P.K. DAS, Jt. Secy.

नई दिल्ली, 31 मार्च, 2014

का.आ. 1170.—केन्द्र सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, सुश्री तरनुम चीमा, अधिवक्ता को आरसी. 7(एस)/2005-एससीबी-II/डीएलआई, आरसी. 8(एस)/2005/एससीबी-II/डीएलआई एवं आरसी 25(एस)/2005/एससीयू/एससीआर.I /डीएलआई (“के.आ. ब्यूरो बनाम सज्जन कुमार एवं अन्य”, समेकित आरोप-पत्र) एवं इससे सम्बन्धित व अनुषांगिक मामलों एवं इससे उत्पन्न अपीलों/पुनरीक्षणों तथा इससे सम्बद्ध या इसी संव्यवहार में अन्य मामलों का संचालन करने के लिए विशेष लोक अभियोजक नियुक्त करती है।

[फा. सं. 225/53/2013-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 31st March, 2014

S.O. 1170.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Ms Tarannum Cheema, Advocate as Special Public Prosecutor for conducting prosecution of RC 7(S)/2005-SCB-II/DLI, RC 8(S)/2005/SCB-II/DLI & RC

25(S)/2005/SCU.I/SCR.I/DLI (Consolidated Chargesheet, "CBI Vs Sajjan Kumar and others") in the trial court of Delhi instituted by the Delhi Special Police Establishment (C.B.I.) and appeals/revisions or other matters connected therewith and incidental thereto.

[F. No. 225/53/2013-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 26 मार्च, 2014

का.आ. 1171.—केन्द्र सरकार आपराधिक प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री राकेश कुमार खन्ना, अतिरिक्त सॉलीसिटर जनरल को दिल्ली हाईकोर्ट में, दिल्ली विशेष पुलिस संस्थापन (सी.बी.आई) द्वारा संस्थापित, सीबीआई केस आरसी 4 (एस)/1987-एससीयू-I/नई दिल्ली से उद्भूत क्रिमिनल रिवीजन पेटीशन 651/2010, 95/2012, 120/2012 तथा 268/2012 (ए.के. जजोदिया एवं अन्य के विरुद्ध शासकीय गोपनीय अधिनियम मामला) एवं इससे संबंधित व आनुषांगिक किन्ही अन्य मामलों में, विचारण के लिए, विशेष लोक अभियोजक नियुक्त करती है।

[फा. सं. 225/7/2014-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 26th March, 2014

S.O. 1171.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Rakesh Kumar Khanna, Additional Solicitor General as Special Public Prosecutor for appearing in Criminal Revision Petitions 651/2010, 95/2012, 120/2012 and 268/2012 arising out of CBI case RC 4 (S)/1987-SCU-I/ New Delhi (Official Secret Act case against A.K. Jojodia & Others) instituted by the Delhi Special Police Establishment (C.B.I.) in the Delhi High Court at Delhi and other matters connected therewith and incidental thereto.

[F. No. 225/7/2014-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 2 अप्रैल, 2014

का.आ. 1172.—जीवन बीमा निगम अधिनियम 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री गुरदयाल सिंह संधू, सचिव, वित्तीय सेवाएं विभाग को श्री राजीव टकरु के स्थान पर तत्काल प्रभाव से और अगले आदेशों तक उक्त निगम के सदस्य के रूप में नियुक्त करती है।

[फा. सं. 14/3/2003-बीमा-IV]

प्रिया कुमार, निदेशक (बीमा)

New Delhi, the 2nd April, 2014

S.O. 1172.—In exercise of the powers conferred by Section 4 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby appoints Shri Gurdial Singh Sandhu, Secretary, Department of Financial Services as Member of the said Corporation vice Shri Rajiv Takru, with immediate effect till further orders.

[F. No. 14/3/2003-Ins. IV]

PRIYA KUMAR, Director (Insurance)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 27 मार्च, 2014

का.आ. 1173.—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उपधारा (1) के खंड (ङ) के उपखंड (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री अमिताभ कांत, सचिव, औद्योगिक नीति एवं संवर्धन विभाग, वाणिज्य एवं उद्योग मंत्रालय, को अगले आदेश होने तक श्री सौरभ चन्द्र के स्थान पर भारतीय निर्यात-आयात बैंक (एकजम बैंक) के निदेशक मण्डल में निदेशक के रूप में नामित करती हैं।

[फा. सं. 24/27/2002-आईएफ-1]

अशोक अग्रवाल, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 27th March, 2014

S.O. 1173.—In pursuance of the powers conferred by Sub-Clause (i) of Clause (e) of sub-section (1) of Section 6 of the Export Import Bank of India Act, 1981 (28 of 1981), the Central Government hereby nominates Shri Amitabh Kant, Secretary, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, as Director on the Board of Directors of Export Import Bank of India (Exim Bank) vice Shri Saurabh Chandra until further orders.

[F. No. 24/27/2002-IF-1]

ASHOK AGGARWAL, Under Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय
(उपभोक्ता मामले विभाग)
(भारतीय मानक ब्यूरो)
नई दिल्ली, 4 फरवरी, 2014

का.आ. 1174.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड के अनुसरण में एतद्वारा अधिसूचित किया जाता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में

दिये गये हैं वे रद्द कर दिए गए हैं और वापस ले लिए गये हैं :

अनुसूची

क्र.	वापस लिये गए	भारत के राजपत्र	टिप्पणी
सं.	मानक(कों) की	भाग 2, खंड 3,	
	संख्या और वर्ष	उपखंड (ii) में	
		का.आ. संख्या	
		और तिथि प्रकाशित	

(1)	(2)	(3)	(4)
1	आई एस 7013: 1981	2147, 18-05-1985	समिति ने बैठक में निर्णय लिया है कि रेडियो डॉयल लैम्प असितत्व में नहीं है

[संदर्भ ईटी 23/टी.15]

आर.सी. मैथ्यू, वैज्ञानिक 'एफ' एवं प्रमुख (विद्युत तकनीकी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 4th February, 2014

S.O. 1174.—In pursuance of clause (b) of sub-rule (1) of Rules (1) of Rule 7 of the Bureau of Indian Standards Rules, it is hereby notified that the Indian Standards, particulars of which are mentioned in the Schedule give hereafter, have been cancelled and stand withdrawn.

SCHEDULE

Sl. No. & Year No. of the Indian Standard Withdrawn	S O No. & Date published in the Gazette of India Part-II, Section-1, Sub-section (ii)	Remarks
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(1)	(2)	(3)	(4)
1	IS 7013: 1981 Radio dial lamps (First revision)	2147 dt. 18-05-1985	Committee decided in the meeting that as the use of Radio dial lamps no longer exists.

[Ref. ET 23/T-15]

R. C. MATHEW, Scientist 'F' & Head (Electrotechnical)

नई दिल्ली, 15 मार्च, 2014

का.आ. 1175.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गये हैं।

अनुसूची

क्रम सं.	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	स्थापित तिथि	भारतीय मानक (कों) जो कि रद्द होने हैं, अगर है, की संख्या वर्ष और शीर्षक	रद्द होने की तिथि
(1)	(2)	(3)	(4)	(5)
1.	आई एस 1161 : 2014-इस्पात नलिकाएं संरचनात्मक उपयोगों के लिए-विशिष्टि (पांचवां पुनरीक्षण)	15 मार्च 2014	आई एस 1161 : 1998 इस्पात नलिकाएं संरचनात्मक उपयोगों के लिए-विशिष्टि (चौथा पुनरीक्षण)	15 मार्च 2014
2.	आई एस/आई एस ओ 1701-2: 2004 परिवर्ती ऊँचाई वाली टेबल मिलिंग मशीनों की परीक्षण शर्तें परिशुद्धता हेतु परीक्षण भाग 2 उर्ध्वाधर तर्कु वाली मशीनें	15 मार्च 2014	आई एस 2200 (भाग 3): 2002/आई एस ओ 1701-3:2004 परिवर्ती ऊँचाई वाली टेबल मिलिंग मशीनों की परीक्षण शर्तें परिशुद्धता हेतु परीक्षण भाग 3 उर्ध्वाधर तर्कु वाली मशीनें	15 मार्च 2014
3.	आईएस 3196 (भाग 1): 2013 अल्प दाव द्रवणीय गैसों के लिए 5 लिटर से अधिक जल क्षमता वाले बेल्डिंग अल्प कार्बन इस्पात के सिलिंडर भाग 1 द्रवित पैट्रोलियम गैस एलपीजी के लिये सिलिंडर-विशिष्टि (छठा पुनरीक्षण)	15 मार्च 2014	आईएस 3196 (भाग 1): 2013 अल्प दाव द्रवणीय गैसों के लिए 5 लिटर से अधिक जल क्षमता वाले बेल्डिंग अल्प कार्बन इस्पात के सिलिंडर भाग 1 द्रवित पैट्रोलियम गैस एलपीजी के लिये सिलिंडर-विशिष्टि (पांचवां पुनरीक्षण)	15 मार्च 2014
4.	आई एस 3406 (भाग 2) : 2014 काउंटरसिक एवं काउंटरबोर के आयाम भाग 2 काउंटरबोर (तीसरा पुनरीक्षण)	15 मार्च 2014	आई एस 3406 (भाग 2) : 2014 काउंटरसिक एवं काउंटरबोर के आयाम भाग 2 काउंटरबोर (दूसरा पुनरीक्षण)	15 मार्च 2014
5.	आई एस 4081 : 2013 ब्लास्टिंग और संबंधित ड्रिलिंग कार्य-सुरक्षा संहिता (दूसरा पुनरीक्षण)	15 मार्च 2014	आई एस 4081 : 2013 ब्लास्टिंग और संबंधित ड्रिलिंग कार्य-सुरक्षा संहिता (पहला पुनरीक्षण)	15 मार्च 2014
6.	आई एस 5916: 2013 गर्म बिटुमिनस सामग्री को प्रयुक्त कर निर्माण- सुरक्षा संहिता (पहला पुनरीक्षण)	15 मार्च 2014	आई एस 5916: 1970 गर्म बिटुमिनस सामग्री को प्रयुक्त कर निर्माण करने के लिए सुरक्षा संहिता	15 मार्च 2014
7.	आई एस 6255 : 2013 बेलनाकार शैंक युक्त डोवीटेल कटर्स और प्रतीव (इनवर्स) डोवीटेल कटर्स (तीसरा पुनरीक्षण)	15 मार्च 2014	आई एस 6255 : 2013 बेलनाकार शैंक युक्त डोवीटेल कटर्स और प्रतीव (इनवर्स) डोवीटेल कटर्स (दूसरा पुनरीक्षण)	15 मार्च 2014
8.	आई एस 14872 (भाग 1) : 2014 आई एस ओ 1-3408 2006 : बाल स्क्रू भाग 1 पारिभाषिक शब्दावली और अभिनाम (पहला पुनरीक्षण)	15 मार्च 2014	आई एस 14872 (भाग 1) : 2014 आई एस ओ 1991: 1-3408 : बाल स्क्रू भाग 1 पारिभाषिक शब्दावली और अभिनाम	15 मार्च 2014

(1)	(2)	(3)	(4)	(5)
9.	आई एस 14872 (भाग 3) : 201/3 आई एस ओ 3408-3: 2006 बाल स्कू भाग 3 स्वीकरण स्थितियां और स्वीकरण परीक्षण (पहला पुनरीक्षण)	15 मार्च 2014	आई एस 14872 (भाग 3) : 201/3 आई एस ओ 3408-3: 1992 बाल स्कू भाग 3 स्वीकरण स्थितियां और स्वीकरण परीक्षण	15 मार्च 2014
10.	आई एस 15248 (भाग 1) : 2013 मशीन औजार- दो पीस के जॉ वाली स्वत केन्द्रित चकों के आयाम तथा ज्यामितीय परीक्षण भाग 1 जीभ एवं खॉच प्रकार के जबड़ों वाली हस्तचालित चकों भाग 1 जीभ एवं खॉच प्रकार के जबड़ों वाली हस्तचालित चकों	15 मार्च 2014	आई एस 15248 :2002/आई एस ओ 3442 : 1991 भारतीय मानक मशीन टूल्स के लिए दो- पीस जबड़ों वाली स्वत : केन्द्रण वाली चक (टंग व गुव टाईप)-अन्तर्विनिमय योग्य माप तथा स्वीकरण परीक्षण विशिष्टियां	15 मार्च 2014
11.	आई एस 15248 (भाग 2) : 2013 मशीन औजार- दो पीस के जॉ वाली स्वत केन्द्रित चकों के आयाम तथा ज्यामितीय परीक्षण भाग 2 जीभ एवं खॉच प्रकार के जबड़ों वाली पावर चालित चकों भाग 2 जीभ एवं खॉच प्रकार के जबड़ों वाली पावर चालित चकों	15 मार्च 2014	-	15 मार्च 2014
12.	आई एस 15248 (भाग 3) : 2013 मशीन औजार- दो पीस के जॉ वाली स्वत केन्द्रित चकों के आयाम तथा ज्यामितीय परीक्षण भाग 3 क्रकाचित (सेरेटेड)-जबड़ों वाली पावर चालित चकों	15 मार्च 2014	-	15 मार्च 2014
13.	आई एस 15883 (भाग 5) : 2013 निर्माण परियोजना प्रबंधन-दिशा- निर्देश भाग 5 स्वास्थ्य व सुरक्षा प्रबंधन	15 मार्च 2014	-	15 मार्च 2014
14.	आई एस 15975 : 2013 गैस सिलिंडर -गैस सिलिंडरों की भराई की अवस्थाएं	15 मार्च 2014	आई एस 8866 : 1978 गैस सिलिंडर में भरी उच्च दाब उवणीय गैसों हेतु भरण अनुपात और संगत उत्पन्न दाब आई एस 8867 : 1978 गैस सिलिंडर में भरी निम्न दाब उवणीय गैसों हेतु संतृप्त वाष्प दाब और परीक्षण दाब आई एस 8868 : 1988 प्रयोग किए जा रहे गैस सिलिन्डरों के आवधिक निरीक्षण अनुतरात	15 मार्च 2014
15.	आई एस 16054 :2013 आवधिक निरीक्षण एवं परीक्षण- द्रवित पैट्रोलियम गैस एलपीजी के लिए 5- लिटर से अधिक जल क्षमता वाले वेल्डित अल्प कार्बन इस्पात के सिलिंडर- रीति संहिता	31 मार्च 2014	-	31 मार्च 2014

(1)	(2)	(3)	(4)	(5)
16.	आई एस 16059 : 2013 ठोस कार्बाइड समांतर शैंक एंथित बरमा जॉबर शृंखला-विशिष्टि	15 मार्च 2014	—	15 मार्च 2014
17.	आई एस 16060 : 2013 ठोस कार्बाइड समांतर शैंक एंथित बरमा स्टब शृंखला-विशिष्टि	15 मार्च 2014	—	15 मार्च 2014
18.	आई एस 16136 : 2013 ठोस कार्बाइड सतत समानांतर शैंक वाले एण्ड मिल-विशिष्टि	15 मार्च 2014	—	15 मार्च 2014
19.	आई एस/आई एस ओ/ टी एस 800004-4 : 2011 नैनोप्रौद्योगिकी शब्दावली भाग नैनोस्ट्रक्चर्ड सामग्रियां	15 मार्च 2014	—	15 मार्च 2014

इस भारतीय मानक की प्रतियां भारतीय मानक व्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली 110002 क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकता, चंडीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूर्णे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> द्वारा इंटरनेट पर खरीदा जा सकता है।

[संदर्भ पीयूबी/जीएन-1]

कला एम. वारियर, निदेशक, (विदेशी भाषा एवं प्रकाशन)

New Delhi, the 15th March, 2014

S.O. 1175.—In pursuance of Clause (b) of sub-rule (1) of Rules 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the second column of Schedule hereto annexed has been established on the date indicated against it in third column. The particulars of the standards, if any, which are given in the fourth column shall also remain in force concurrently till they are cancelled on the date indicated against them in the fifth column.

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	Date of Establishment	No. & Year of the Indian Standards to be cancelled, if any	Date of cancellation
(1)	(2)	(3)	(4)	(5)
1.	IS 1161 : 2014 Steel Tubes for Structural Purposes- Specification (Fifth Revision)	15 March 2014	IS 1161: 1998 Steel Tubes for Structural Purposes- Specification (Fourth Revision)	15 March 2014
2.	IS/ISO 1701-2 : 2004 Test Conditions for Milling Machines with table of variable height- Testing of Accuracy Part 2 Machines with vertical spindle	15 March 2014	IS 2200 (Part 3) : 2002/ISO 1701-3 : 1997 Test conditions for milling machines with table of variable height-Testing of accuracy Part 3 Machines with vertical spindle	15 March 2014

(1)	(2)	(3)	(4)	(5)
3.	IS 3196 (Part 1) : 2013 Welded Low Carbon Steel Cylinders Exceeding 5 Liters Water Capacity for Low Pressure Liquefiable Gases Part 1 Cylinders for Liquefied Petroleum Gases (LPG)- Specification (Sixth Revision)	15 March 2014	IS 3196 (Part 1) : 2006 Welded Low Carbon Steel Cylinders Exceeding 5 Liters Water Capacity for Low Pressure Liquefiable Gases Part 1 Cylinders for Liquefied Petroleum Gases (LPG)- Specification (Fifth Revision)	15 March 2014
4.	IS 3406 (Part 2) : 2014 Dimensions for countersinks and counterbores Part 2 Counterbores (Third Revision)	15 March 2014	IS 3406 (Part 2) : 1986 Dimensions for countersinks and counterbores Part 2 Counterbores (Second Revision)	15 March 2014
5.	IS 4081 : 2013 Blasting and Related Drilling Operations-Code of Safety (Second Revision)	15 March 2014	IS 4081 : 1986 Safety code for blasting and related drilling operations (First Revision)	15 March 2014
6.	IS 5916 : 2013 Constructions involving Use of Hot Bituminous Materials- Code of Safety (First Revision)	15 March 2014	IS 5916 : 1970 Safety code for construction involving use of hot bituminous materials	15 March 2014
7.	IS 6255 : 2013 Inverse dovetail cutters and dovetail cutters with Cylindrical shank (Third Revision)	15 March 2014	IS 6255 : 1995 Inverse dove-tail and dove-tail milling cutters- Specification (Second Revision)	15 March 2014
8.	IS 14872 (Part 1) : 2014/ISO 3408-1 : 2006 Ball Screws-Part 1 Vocabulary and designation (First Revision)	15 March 2014	IS 14872 (Part 1) : 2000/ISO 3408-1 : 1991 Ball Screws-Part 1 Vocabulary and designation	15 March 2014
9.	IS 14872 (Part 3) : 2013/ISO 3408-3 : 2006 Ball screws-Part 3 : Acceptance conditions and acceptance Tests (First Revision)	15 March 2014	IS 14872 (Part 3) : 2000/ISO 3408-3 : 1992 Ball screws-Part 3 : Acceptance conditions and acceptance Tests	15 March 2014
10.	IS 15248 (Part 1) : 2013/ISO 3442-1 : 2005 Machine tools-Dimensions and geometric tests for self- centring chucks with two-piece jaws Part 1 Manually operated chucks with Tongue and Groove type jaws	15 March 2014	IS 15248 : 2002/ISO 3442 : 1991 Self- centring chucks for machine tools with two-piece jaws (tongue and groove type)- Sizes for interchangeability and acceptance test specification	15 March 2014
11.	IS 15248 (Part 2) : 2013/ISO 3442-2 : 2005 Machine tools-Dimensions and geometric tests for self- centring chucks with two-piece jaws Part 2 Power-operated chucks with Tongue and Groove type jaws	15 March 2014	- - -	15 March 2014
12.	IS 15248 (Part 3) : 2013/ISO 3442-3 : 2007 Machine tools-Dimensions and geometric test for self- centring chucks with two-piece jaws Part 3 Power-operated chucks with serrated jaws	15 March 2014	- - -	15 March 2014

(1)	(2)	(3)	(4)	(5)
13.	IS 15883(Part 5) : 2013 Construction Project Management- Guidelines : Part 5 Health and Safety Management	15 March 2014	- - -	15 March 2014
14.	IS 15975 : 2013 Gas Cylinders- Conditions for Filling Gas Cylinders	15 March 2014	IS 8866 : 1978 Filling ratios and corresponding developed pressure for high pressure liquefiable gases contained in gas cylinder IS 8867 : 1978 Saturated vapour pressure and test pressure for low pressure liquefiable gases contained in gas cylinders IS 8868 : 1988 Periodical inspection interval of gas cylinders in use	15 March 2014
15.	IS 16054 : 2013 Periodic Inspection and Testing-Welded Low Carbon Steel Cylinders Exceeding 5- Liter Water Capacity for Liquified Petroleum Gas (LPG)- Code of Practice	31 March 2014	- - -	31 March 2014
16.	IS 16059 : 2013 Solid carbide parallel shank twist drills jobber series-Specification	15 March 2014	- - -	15 March 2014
17.	IS 16060 : 2013 Solid carbide parallel shank twist drills series-Specification	15 March 2014	- - -	15 March 2014
18.	IS 16136 : 2013 Indian standard Solid carbide end mills with continuous parallel shank Specification	15 March 2014	- - -	15 March 2014
19.	IS/ISO/TS 80004-4 : 2011 Nanotechnologies- Vocabulary Part 4 Nanostructured Materials	15 March 2014	- - -	15 March 2014

Copies of these standards are available for sale with the Bureau of Indian Standards, Manak Bhawan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : Kolkatta, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Kochi.

[Ref. PUB/GN-1]

KALA M. VARIAR, Director (Foreign Languages & Publication)

विधि एवं न्याय मंत्रालय

(न्याय विभाग)

नई दिल्ली, 11 मार्च, 2014

का.आ. 1176.—राष्ट्रपति, भारत के संविधान के अनुच्छेद 222 के खंड (2) के अनुसरण में निम्नलिखित आदेश करते हैं, नामतः :-

हिमाचल प्रदेश उच्च न्यायालय के मुख्य न्यायाधीश,
श्री न्यायमूर्ति अजय मानिकराव खानविलकर (पी एच सी : बम्बई)

जिन्हें मध्य प्रदेश उच्च न्यायालय में स्थानांतरित किया गया है, अपनी सेवा की उस अवधि के लिए जब वह अपने मूल उच्च न्यायालय से बाहर मध्य प्रदेश के मुख्य न्यायाधीश के रूप में अपनी सेवाएं प्रदान करेंगे, अपने वेतन के अतिरिक्त, 9000 रु. (नौ हजार रुपए मात्र) प्रतिमाह का प्रतिपूरक भत्ता प्राप्त करने के पात्र होंगे।

[सं. के. 11017/7/2012-यू एस.1]

प्रवीण गर्ग, संयुक्त सचिव

MINISTRY OF LAW AND JUSTICE

(Department of Justice)

New Delhi, the 11th March, 2014

S.O. 1176.—In pursuance of Clause (2) of Article 222 of the Constitution of India, the President hereby makes the following order namely:

Shri Justice Ajay Manikrao Khanwilkar (PHC : Bombay), Chief Justice, Himachal Pradesh High Court who has been transferred to Madhya Pradesh High Court, shall be entitled to receive, in addition to his salary, a compensatory allowance of Rs. 9000 (Rs. Nine thousand only) per month, for the period of his service when he performs his duties as Chief Justice, Madhya Pradesh High Court outside of his parent High Court.

[No. K. 11017/7/2012-US.I]

PRAVEEN GARG, Jt. Secy.

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

(स्वास्थ्य एवं परिवार कल्याण विभाग)

नई दिल्ली, 2 अप्रैल, 2014

का.आ. 1177.—जबकि भारतीय चिकित्सा परिषद; संशोधन अध्यादेश, 2013 की धारा 3क की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिनांक 06 नवंबर, 2013 को भारतीय चिकित्सा परिषद का पुनर्गठन किया गया :

और जबकि केन्द्र सरकार ने भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) के खंड (ग) के अनुसरण में पंजीकृत आयुर्विज्ञान स्नातक निर्वाचन क्षेत्रों से सदस्यों का निर्वाचन किया और निम्नलिखित व्यक्ति को इस अधिसूचना के जारी होने की तिथि से चार वर्षों के लिए भारतीय आयुर्विज्ञान परिषद के सदस्य के रूप में निर्वाचित किया गया है।

अतः अब उक्त अधिनियम की धारा 3 की उपधारा (1) के उपबंध के अनुसरण में केन्द्र सरकार द्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का.आ. 138 में निम्नलिखित संशोधन किए जाते हैं; अर्थात् :

भारत सरकार, स्वास्थ्य एवं परिवार कल्याण मंत्रालय की दिनांक 06 नवंबर, 2013 की अधिसूचना संख्या का.आ. 3324 (अ) में अंतिम प्रविष्टि तथा तत्संबंधी प्रविष्टि में निम्नलिखित को जोड़ा जाएगा, अर्थात् :

क्र. पंजीकृत चिकित्सा निर्वाचित सदस्य	निर्वाचन की
सं. स्तानक निर्वाचित का विवरण	प्रक्रिया
क्षेत्र का नाम	
12. ओडिशा	डॉ. चित्तरंजन कर, प्रोफेसर ऑफ नेफ्रोलॉजी, एस सी बी मेडिकल कॉलेज, कट्टक

[सं. वी. 11013/1/2013-एम ई पी-I (वोल-II)]

अमित बिश्वास, अवर सचिव

पाद टिप्पणी : दिनांक 9 जनवरी, 1960 के का.आ. सं. 138 के तहत भारत के राजपत्र में मुख्य अधिसूचना प्रकाशित की गई थी और भारतीय आयुर्विज्ञान परिषद (संशोधन), द्वितीय अध्यादेश, 2013 (2013 का 11) के तहत अंतिम बार संशोधित किया गया था।

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 2nd April, 2014

S.O. 1177.—Whereas on 06th November, 2013, the Medical Council of India was re-constituted in exercise of the powers conferred by sub-section (1) of section 3A of the Indian Medical Council (Amendment) Ordinance, 2013;

And Whereas the Central Government, in pursuance of clause (c) of sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) has conducted the election from the Registered Medical Graduate Constituency and the following has been elected to be a member of the Medical Council of India for four years with effect from the date of issue of this notification.

Now, therefore, in pursuance of the provision of sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following amendment in the Notification of the Government of India in the then Ministry of Health number S.O. 138 dated the 9th January, 1960, namely:-

In the notification of the Government of India in the Ministry of Health & Family Welfare number S.O. 3324 (E) dated the 06th November, 2013, after the last entry and entry relating thereto, the following shall be inserted, namely:

S. No.	Name of the Registered Medical Graduate Constituency	Details of the Elected Member	Mode of Election
12.	Odisha	Dr. Chittaranjan Kar, Elected Professor of Nephrology, SCB Medical College, Cuttack.	

[No. V. 11013/1/2013-MEP-I (Vol. II)]

AMIT BISWAS, Under Secy.

Foot Note : The principal notification was published in the Gazette of India vide number S.O. 138 dated the 9th January, 1960 and was last amended vide Indian Medical Council (Amendment) Second Ordinance, 2013 (11 of 2013).

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 24 मार्च, 2014

का.आ. 1178.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर हैंडमेड पेपर प्रोडक्शन खादी और विलेज इंडस्ट्रीज कमीशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सी जी आईटी/एनजीपी/ 163/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था।

[सं. एल-42012/36/95-आईआर (डीयू)]
पी. के. वेणुगोपाल, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 24th March, 2014

S.O. 1178.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/163/2002) of the Cent. Govt. Indus. Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the industrial dispute between the employer in relation to the management of the Director, Handmade Paper Production Khadi & Village Industrial Commission and their workman, which was received by the Central Government on 24-03-2014.

[No. L-42012/36/95-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/163/2002 Date: 03.03.2014.

Party No.1 : The Director,
Handmade Paper Production
Marketing and Training Centre,
Khadi & Village Industries
Commission,
Wardha-442001.

Versus

Party No.2 : Shri Deochand Tukaramji Pingre,
C/o Sunil Suresh Rao Rewatkar,
R/o Ramnagar, Ward No.27,
Wardha – 442001.

AWARD

(Dated: 3rd March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Handmade Paper Production and Training Centre and their workman, Shri Deochand Tukaramji Pingre, for adjudication, as per letter No.L-42012/36/95-IR(DU) dated 27.03.1996, with the following schedule:-

“Whether the action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Deochand Tukaramji Pingre was proper, justified and legal? If not, to what relief the workman is entitled to?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Deochand Tukaramji Pingre, ('the workman' in short), filed the statement of claim and the management of Handmade Paper Production and Training Centre ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that Party No. 1 is a Central Government undertaking and is engaged in manufacturing and production of Handmade Papers and in the factory of Party No. 1 at Wardha, about 250 permanent employees were working and he was employed by Party No. 1 as a semiskilled worker on 01.05.1986 and worked continuously and he was being paid @ Rs. 675/- per month and though he himself and 17 other workers engaged by Party No. 1 worked with Party No. 1 for several years, they were continued as temporary workers.

The further case of the workman is that since the date of his appointment, he worked continuously without any gap and he had put in 240 days of attendance in every year of service, but he was not made permanent in service and even though, he was doing the same work as done by the permanent workers, neither he was paid wages at par with the permanent employees nor given the benefits of bonus, E.S.I. Schemes and Provident Fund Scheme etc and as Party No. 1 did not issue the attendance-cum-Wage Card to him and the other 17 temporary workers, on 18.11.1993, all of them issued a notice through an advocate to Party No 1 to make them permanent and to give them all other benefits of permanent employees and soon after the receipt of the said notice, Party No. 1 did not allow him and other temporary workers to resume duty w.e.f. 20.11.1993 and he was informed by Party No1 through Shri A. Datta that he would be allowed to resume duty in case of his consenting to work under the Contractor, but he refused the offer, as because, he had already worked with Party No. 1 for years together and was entitled to be made permanent in service as per the representation dated

18.11.1993 and though he approached Party No. 1 on 21.11.1993 and 22.11.1993, he was not provided with work, so he alongwith the other 17 temporary workers on 22.11.1993 issued another notice, but inspite of the same, no work was provided to them, so they issued another notice through the advocate on 27.11.1993, but Party No. 1 neither replied to the notice nor provided him any work and thereafter also, he continuously approached and requested the Party No. 1 to provide him work, but Party No. 1 did not pay any heed to his request and after waiting for a long time, he approached the Labour Court, Nagpur by filing U.L.P.A. Complaint No. 795 of 1993 and the Labour Court vide its interim order, directed Party No. 1 to reinstate him in service, but no work was provided to him by Party No. 1 and Party No. 1 moved a revision application before the Industrial Court, Nagpur, against the order of the Labour Court raising objection of the Labour Court of having no jurisdiction to entertain and decide the matter pertaining to the establishment of the Central Government.

The further case of the workman is that out of the rest 17 retrenched workers, five workers approached the Asstt. Labour Commissioner (Central), Nagpur ("the ALC" in short) and the said five workers were provided with work by Party No. 1, so he withdrew the case filed by him in the Labour Court, Nagpur and approached the ALC by filing an application under Section 2-A of the Act and the five workers, who had been provided work by Party No. 1 after their approaching the ALC were juniors to him and the ALC issued notice to Party No. 1 and Party No. 1 did not agree for any amicable settlement, so there was failure of the conciliation proceedings and the ALC submitted the failure report to the Central Government.

It is also pleaded by the workman that Party No. 1 had issued experience certificate in his favour and before terminating his services, Party No. 1 neither issued one month's notice nor paid notice pay in lieu of the notice or retrenchment compensation as provided under Section 25-F of the Act and therefore, his removal/retrenchment from services is illegal, improper and contrary to law and he is entitled for reinstatement in services with full back wages alongwith all monetary benefits of permanent employee, from the date of joining the service of Party No. 1 till the date of actual reinstatement and work is still available with Party No. 1 and Party No. 1 engaged new persons on less wages for more production.

3. The Party No. 1 in the written statement has pleaded inter-alia that it does not have any Managing Director, but only a Director of Handmade Paper Industry, which runs under Khadi and Village Industries Commission ("KVIC" in short) and KVIC is a statutory body, which was created by the statute, "Khadi & Village Industries commission Act, 1956" and KVIC is functioning under the Ministry of Industry, Government of India and to achieve the object entrusted to KVIC, several Research and

Training Centers were established including the J.B. Research Institute at Wardha, to provide artisan training courses for Handmade Paper Industries, but the unit so established at Wardha was handed over to a local institution, namely, "Khadi Gramodhyog Sangh, Manganwadi, Wardha, for the purpose of continuing the production activities and in 1984, the management of the said unit was taken over by it and it was decided to use the said unit as a demonstration-cum-extension Centre, for conducting experiments and testing etc. and arranging training of skilled workers and two technical persons were posted to look after the work and the unit finally started its Science & Technology (Research) work and for that some workers were engaged on daily wages, from November, 1984 and the work involved were of research and training and therefore not a continuous work and the workers were engaged as per requirements of work and after completion of the work, they were discontinued and none of the workers was engaged on continuous basis and the said unit functioned from 1984 to 1988 and when the unit was doing a prestigious research work of developing a process for making stiff, thick and hard water proof board by using completely waste banana stem, the workers stopped attending the work from 11.01.1988 and when enquiry was made for their non attendance, it was informed that they wanted regular work without break and unless and until their such demand would be fulfilled, they would not join the work.

It is further pleaded by Party No. 1 that six of the daily wages workers lodged complaint with the ALC and worker Shankar Rao Ingle approached the Labour court, Nagpur and a written statement was filed by KVIC raising the question of jurisdiction and the said case continued till 1991 without adjudication and there was a joint discussion on 18.01.1991 between the six workers, who had made complaint to ALC and the in charge of the unit at Wardha and it was informed to the ALC that under Production Marketing and Training Programme of KVIC, the unit would start functioning from 01.02.1991, where all the six workers could be engaged on daily wages, as such, the ALC closed the case with the instruction to inform him about the appointment and appointment letters dated 28.01.1991 were issued to the said six workers including Shankar Rao Ingle, directing them to join work and out of them, five workers joined their duties and the appointment of Shankar Rao Ingle was made with the condition of withdrawal of the case filed by him, but Shankar Rao Ingle neither withdrew the case nor joined work and one of the conditions of appointment of the rest five workers was that they would enter into an agreement with its management and the finalization of the agreement took a long time and on 19.11.1993, a meeting was held with all the workers and in the presence of the then Director, Regional Office, KVIC, Wardha, the workers were

requested to enter into the agreement, which was at par with another unit of Handmade Paper at Pune and the workers requested for two to three days time to give their consent, however, on 22.11.1993, the workers sent a letter informing their unwillingness to work on contract basis and that they would work only on daily wages basis and it was surprised to note that when the workers were provided work on daily wages basis in 1988, they demanded continuous work and when they were offered continuous work under Production Marketing and Training Programme in 1991, they refused to enter into an agreement and to work on contract basis, refusing to adhere to the condition of appointment and the workers could not be continued due to their refusal to enter into the agreement and their discontinuance from work was on their own accord and workers had stalled the Research Programme in 1988 and the unit had to remain close till 1991.

Party No. 1 has further pleaded that five workers approached the ALC (Central), Nagpur vide their complaint dated 22.11.1993, complaining that they were illegally terminated and the conciliation proceedings ended in failure and on submission of the failure reports by the ALC (Central), Nagpur, the Central Government refused to refer the cases of the said five workers for adjudication, by order dated 20.01.1995.

The further case of the Party No. 1 is that in the meantime, in the complaints filed by the workers in the Labour Court, Nagpur interim order was passed on 31.05.1994 directing it to reinstate the complainants and it filed revision before the Industrial Court against the order dated 31.05.1994 and on 17.08.1994, by way of pursis, the workers gave the undertaking before the Industrial Court not to proceed with the complaint filed before the Labour Court and in view of the withdrawal of the complaint by the workers, it also withdrew the revision from the Industrial Court on 10.04.1995 and on the basis of the orders of the Ministry, the Directorate of Handmade Paper Industry, Central Office at Mumbai moved a note to the commission to close down the production and Marketing activities of the unit and subsequently, the commission in its 449 the meeting dated 20.12.1995 decided to close down the activities and retrench all daily wage workers and on the basis of the commission's decision, all workers were served with the retrenchment notice alongwith the retrenchment compensation on 09.02.1996 and some workers, who had left the work as far back as 1993 were also given the retrenchment benefit.

The specific case of the Party No. 1 is that the workman was not in its employment since 01.05.1986 and he did not work continuously since the date of his appointment and he worked intermittently on daily wages, as and when work was available and as the workers denied to enter into an agreement, the production activities were

stopped and presently, it is engaged only in providing Artisan training and in the year 1993, there were only two permanent Handmade Paper staff and four JBCRI staff and at present, there are only one Handmade Paper staff and three permanent JBCRI staff and the unit at Wardha had to be closed from 11.01.1988 to 1991, as the daily wage workers left the work and the unit again started functioning from 01.02.1991 and at that time, the workman and other workers were given appointment letters with conditions that they have to enter into an agreement and the workman was appointed on 23.09.1991 the claim of the workman that he had put in continuous service of 240 days is false and the workman did not join the work after 22.11.1993 and he refused to sign the agreement, as per the condition imposed in the appointment letter dated 31.01.1991 and as such, question of not allowing him to join work does not arise and the workman is not entitled to any relief.

4. In the rejoinder, the workman has denied the allegations made in the written statement and reiterated the facts mentioned in the statement of claim. It is further pleaded by the workman in the rejoinder that he was orally terminated w.e.f. 22.11.1993 and due to the intervention of the ALC, the workers were again allowed to resume their duties and thereafter, the workers demanded for their legitimate rights including payment of wages applicable to them and Party No. 1 with malafide intension decided to stop the work, instead of implementing the statutory law and he was provided with work from 1st, February, 1991 as per the order issued to the workers including himself individually and he worked continuously till 22.11.1993 and he was orally terminated from services w.e.f. 22.11.1993, without service of one month's notice or payment of one month's pay in lieu of notice or retrenchment compensation and his oral termination is illegal, improper and contrary to law.

5. It is to be mentioned here that this reference alongwith references No. 160 to 162, 164 to 167 and 169 to 178 of 2002 had been disposed of by this Tribunal by a common award dated 27.03.2007, directing the reinstatement of the workman and other petitioners. Being aggrieved by the said award, the Party No. 1 approached the Hon'ble High Court, Nagpur Bench in Writ Petition No. 4503/2007 and the Hon'ble High Court by order dated 25.08.2008 have been pleased to pass the following orders:-

“In view of the above, the impugned award dated 27.03.2007 passed by the Industrial Tribunal –cum–Labour Court, Nagpur in case Nos. 160/2002 to 167/2002 and 169/2002 to 178/2002 is quashed and set aside. The Tribunal is directed to allow the parties to lead further evidence, if they so desire and decided the cases thereafter. The Tribunal is directed to decide the reference in case Nos. 174/2002 to 178/

2002 by common or separate awards as he deems fit and proper on the basis of the evidence led by the parties.”

According to the direction of the Hon’ble High Court, the parties were given the chance of leading further evidence.

The workman, who had examined himself as a witness in support of his case did not adduce further evidence.

However, the Party No. 1 examined two witnesses, namely, Khandeswar Pralhad Gondane and Milind Wakode and produced documentary evidence in support of its case, besides the evidence already adduced.

6. The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim and rejoinder. The workman in his cross-examination has stated that he worked continuously from 1986 to November, 1993. He has denied the suggestion that he did not work for 240 days in any calendar year.

7. The first witness for Party No. 1 is Amitabh Datta, an Asstt. Director of Party No. 1. The evidence of witness, Amitabh is on affidavit. In his examination in chief on affidavit, in paragraph 8, this witness has stated that, “the party No.2 was given appointment vide letter 23.09.1991 on temporary basis. The appointment was for a fixed period until 31.12.1991, that party No.2 however did not join the work.” In paragraph 11 of his affidavit this witness has stated that, “However the unit was again started from 01.02.1991 and the Party No. 2 were served appointment letter dated 28.01.1991 to join, with conditions that they have to enter into an agreement. That when in 1993 the workers including Party No. 2 was asked to sign the agreement. Instead of signing the agreement the workers including Party No. 2 sent letter dated 22.11.1993 informing that they are not ready to work on contract basis and will work on daily wages. That in absence of entering into the agreement which was the condition of appointment the workers could not be given work and they did not work after 22.11.1993. It is denied that party No.2 was reinstated in service from August,94 to Jan. 1998. It is denied that the retrenchment dated 9.2.1996 was illegal, on the contrary though the Party No. 2 had not worked after 22.11.1993, nor was entitled to, he was given the benefits alongwith other workers. The retrenchment notice alongwith the compensation was sent to all the workers including the Party No. 2.”

In his cross-examination, this witness has stated that he was posted at Wardha from 1984 to 1995 and he knows the workman and the workman was working from 1985 at Wardha. In his cross-examination, this witness has categorically admitted that the workman had worked continuously from 1991 to 1993.

8. The witness no.2 examined by Party No. 1 is Khandeswar Pralhad Gondane. The examination-in-chief on affidavit of this witness is in the line of the stands taken by the Party No. 1 in the written statement. In paragraph 3 of his affidavit, this witness has stated that, “party no. 2 as well as other employees were never in continuous employment with Party No. 1. They had not completed 240 days with Party No.1. Despite this, they were offered with closure compensation alongwith all other legal dues.” Demolishing his own evidence given in the examination-in-chief, in his cross-examination, this witness has stated that he is working with Handmade Paper from 17.07.1992 and the workman was working with Handmade Paper prior to his joining in service and he was also working even after his joining service in 1992. This witness has categorically admitted that the workman worked for more than 240 days in every calendar year.

9. The third witness for Party No. 1 is Milind Wakode, the Divisional Director, Nagpur. In his examination-in-chief on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. This witness has further stated that the Handmade Paper Unit at Wardha had been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995 and retrenchment notice alongwith compensation was sent to all the workers by letter dated 09/10.02.1996. This witness has also proved the office copy of the termination order as Ext. M-II.

In his cross-examination, this witness has stated that Ext. M-II is dated 09.02.1996 and he cannot say the exact date of termination of the workman and Ext. M-III is the office copy of the order dated 31.01.1991 and Ext.M-III was issued after the engagement of the workman by the management and as per condition No.7 of Ext. M-III, the workman was to execute an agreement as prescribed by the office of Handmade Paper, Khadi Board, Pune and as the workman did not agree to execute any agreement, he was not provided with work or made permanent and the workman was engaged as labourer on daily wages and he does not have any idea as to how the retrenchment compensation paid to the workman was calculated and as per Ext. M-II, retrenchment compensation was paid to the workman for 3 years i.e. for 45 days.

10. At the time of argument, it was submitted by the learned advocate for the workman that the workman was working with the Party No. 1 as a semiskilled labourer w.e.f. 01.05.1986 and from the date of his initial appointment, the workman worked continuously and he had completed more than 240 days of work in each calendar year and from the date of completion of 240 days of work, the workman was entitled for regularization in service, but his services were not regularized and the workman was compelled to sign an illegal agreement and when he did not agree to sign the same, he was not allowed to join service from

22.11.1993 and such termination of the workman was without compliance of the mandatory provisions of Section 25-F of the Act and the termination amounts to retrenchment and the termination of the workman is illegal, arbitrary, malafide and contrary to the principles of natural justice and payment of retrenchment compensation in 1996 cannot cure such illegality and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1964 II LLJ-271 (Ambalal Shivlal Vs Vin (D.M.) and others), 1969 II LLJ-373 (Sivanandam Vs Press Superintendent, S. Railway, Madras), 1979 ILLJ-168 (B.M. Gupta Vs State of West Bengal), 1960 I LLJ – 251 (S.C.) (State of Bombay Vs Hospital Mazdoor Sabha) and 1964 I LLJ – 333 (S.C.) (Workmen of Subong Tea Estate Vs Subong Tea Estate).

11. On the other hand, it was submitted by the learned advocate for the Party No. 1 that the terms of the reference is vague and not specific and though, the reference is for adjudication of the legality or otherwise of the termination of the services of the workman, the alleged dated of such termination has not been mentioned in the schedule of reference and the date of the alleged termination is very crucial, in absence of which it is not possible for effective adjudication of the dispute and on that score, the reference is not maintainable. It was also submitted by the learned advocate for the Party No. 1 that in the statement of claim filed by the workman also, there is no specific pleading as to when his services were terminated and on that count also, the reference is to be answered in the negative.

It was further submitted by the learned advocate for the Party No.1 that the workman was offered engagement on daily wages basis as per office order dated 23.09.1991 and he did not join work from 22.11.1993 and refused to enter into the agreement and the workman has not adduced any legal evidence on record to show that he had worked for 240 days in the preceding 12 months of the date of termination and the onus to prove such fact is on the workman, but he failed to discharge the onus by adducing necessary evidence and as such, he is not entitled for the benefits of the provisions of Section 25-F of the Act and as per the decision of the commissioner, the production activities of the unit was closed down and even though, the workman did not work after 1988, notice pay and retrenchment compensation was sent to him alongwith the retrenchment notice dated 09.02.1996 and Party No. 1 did not commit any illegality and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the Party No. 1 placed reliance on the decisions reported

in the decisions reported in (2002) 3 SCC-25 (Range Forest Officer Vs. S.T. Hadimani), (2004) 8 SCC-195 (Municipal Corporation, Faridabad Vs. Siri Niwas), (2005) 8 SCC-481 (Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh), (2005) 8 SCC-750 (Surendra Nagar District Panchayat vs. Dahyabhai Amarsingh), (2006) 2 SCC-716 (M.P. State Agro Industries Development Corpn. Ltd. vs. S.C. Pandey), (2006) 5 SCC-173 (Municipal Council, Sujanpur vs. Surinder Singh), (2006) 9 SCC-697 (Krishna Bhagyajal Nigam Ltd. vs. Mohd. Rafi), (2006) 9 SCC-132 (Surendranagar Distt. Panchayat vs. Ganga Ben Laljibhai), (2006) 9 SCC-124 (Chief Engineer Ranjit Sagar Dam vs. Sham Lal), (2006) 6 SCC-275 (Rajasthan Tourism Development Corporation vs. Intejam Alizafri), (2006) 5 SCC-127 (Nagar Mahapalika vs. State of U.P.), (2006) 1 SCC-106 (R.M. Yellati vs. Asstt. Executive Engineer), (2006) 2 SCC-711 (State of M.P. vs. Arjunlal Rajak), (2007) 13 SCC-343 (Ranip Nagar Palika vs. Babuji Gabhaji Thakore), (2007) 12-172 (State of Maharashtra vs. Dattatraya Digamber Birajdar), 2008 II CLR 1089 (State of Haryana vs. Ramesh Kumar), 92008) 3 SCC-474 (BSNL vs. Mahesh Chand), (2008) 5 SCC-171 (Municipal Corporation, Faridabad vs. Durga Prasad) and (2009) 17 SCC-326 (Ajnala Cooperative Sugar Mills Ltd. vs. Sukhraj Singh).

It is settled beyond doubt by the Hon'ble Apex Court in different judgments including the judgments cited by the learned advocate for the party No.1 that where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it is for the claimant to lead evidence to that effect and the workman's affidavit is not sufficient evidence for that purpose.

Keeping in view the principles as mentioned above, now, the present case at hand is to be considered.

12. So far the first contention raised by the learned advocate for the party No.1 regarding the non-mention of the date of termination of the workman from services in the schedule of reference and in the statement of claim is concerned, admittedly, the alleged date of termination of the workman has not been mentioned in the schedule of reference. However, in the statement of claim, in paragraph 4, it has been mentioned by the workman that, "Immediately after the receipt of the notice dated 18.11.1993, the party No.1 had not allowed the party No.2 and his co-workers, who had issued notice to party No.1, to resume duty w.e.f. 20.11.1993." In paragraph 05 of the statement of claim, it has been mentioned that, "The party No.2 had approached the party No.1 on 21.11.1993 and subsequently on 22.01.1993, but work was not provided."

In the rejoinder, the workman has specifically in paragraphs 1 and 2 has pleaded that he was orally terminated from services w.e.f. 22.11.1993. From the materials on record, it is found that for non-mention of the date of the termination of the workman in the schedule of

reference, it cannot be said that the reference is not maintainable. Hence, I find no force in the contention raised by the learned advocate for the party No.1 in that respect.

13. To prove that he had worked for 240 days in the preceding 12 months of the date of termination, the workman has given his own evidence on affidavit. Though, the workman has not produced any other evidence in support of his such claim, his evidence has been corroborated by the evidence of the witnesses no.1 and 2 of the party No.1. As already mentioned above, Amitabh Datta, the witness No.1 for party No.1 has stated that the workman worked continuously from 1991 to 1993. Khandeswar Pralhad Gondane, witness No.2 for the party No.1 has stated that the workman worked for more than 240 days in every calendar year.

14. Apart from the oral evidence, the documentary evidence produced by the party No.1 clinches the issue in favour of the workman. The party No.1 has produced and proved the notice of retrenchment dated 09/12.02.1996 issued to the workman as Ext. M-II. In Ext. M-II, it has been mentioned that the workman joined in February, 1991 and worked from September, 1991 to November, 1993 and he is entitled for retrenchment compensation for two years i.e. for 30 days at the rate of 15 days per year. So, it is clear from the materials on record that the workman infact had worked for more than 240 days in the preceding 12 calendar months of the date of his termination i.e. 22.11.1993. It is also found from the material on record that before the termination of the workman from services, the mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him. So, the termination of the workman from services amounts to retrenchment and such termination is illegal.

Applying the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocate for the workman to the case in hand, it is found that the issuance of the retrenchment notice as per Ext. M-II and sending of the demand draft towards retrenchment compensation and one month's wages on 09/10.02.1996 does not cure the illegality of termination of the services of the workman w.e.f. 22.11.1993.

15. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh) have been pleased to take into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal Council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs.

Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (In charge Officer Vs. Shankar Setty.) and have been pleased to hold that:-

"In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager in 1991, about 23 years back. It is also found that he continued as such till 22.11.1993, when he was terminated from services by party no.1. It is also found that production and marketing activities of the handmade paper unit, Wardha has been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 60,000/- (Rupees sixty thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Deochand Tukaramji Pingre is illegal and unjustified. The workman is entitled for monetary compensation of Rs.60,000 (Rupees sixty thousand only) in lieu of reinstatement. He is not entitled for any other relief. The party no.1 is directed to pay the monetary compensation of Rs. 60,000 to the workman Shri Deochand Tukarmji Pingre within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 per cent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1179.—आौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर हैंडमेड पेपर प्रोडक्शन खादी और विलेज इंडस्ट्रीज कमीशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट आौद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सी जी आई टी/एनजीपी/161/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था।

[सं. एल-42012/27/95-आईआर (डीयू)]
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March, 2014

S.O. 1179.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/161/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure, in the industrial dispute between the employer in relation to the management of Director, Handmade Paper Production Khadi & Village Industrial Commission and their workmen, which was received by the Central Government on 24-03-2014.

[No. L-42012/27/95-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT,
NAGPUR**

Case No.CGIT/NGP/161/2002

Date: 03.03.2014

Party No.1 : The Director,
Handmade Paper Production
Marketing and Training Centre,
Khadi & Village Industries
Commission,
Wardha-442001.

Versus

Party No.2 : Smt. Shashikala Babarao Auchat,
R/o Hindnagar,
Near Ganesh Mandir,
Ward No.40 Wardha
Tah. & Distt.-Wardha.

AWARD

(Dated: 3rd March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Handmade Paper Production and Training Centre and their workman, Smt. Shashikala Babarao Auchat, for adjudication, as per letter No.L-42012/27/95-IR(DU) dated 27.03.1996, with the following schedule:-

"Whether the action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shashikala Babarao Auchat is proper, justified and legal? If not, to what relief the workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Smt. Shashikala Babarao Auchat, ("the workman" in short), filed the statement of claim and the management of Handmade Paper Production and Training Centre ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that Party No. 1 is a Central Government undertaking and is engaged in manufacturing and production of Handmade Papers and in the factory of Party No. 1 at Wardha, about 250 permanent employees were working and she was employed by Party No. 1 as a unskilled worker on 01.03.1986 and worked continuously and she was being paid @ Rs. 550 per month and though she herself and 17 other workers engaged by Party No. 1 worked with Party No. 1 for several years, they were continued as temporary workers.

The further case of the workman is that since the date of her appointment, she worked continuously without any gap and she had put in 240 days of attendance in every year of service, but she was not made permanent in service and even though, she was doing the same work as done by the permanent workers, neither she was paid wages at par with the permanent employees nor given the benefits of bonus, E.S.I. Schemes and Provident Fund Scheme etc and as Party No. 1 did not issue the attendance-cum-Wage Card to her and the other 17 temporary workers, on 18.11.1993, all of them issued a notice through an advocate to Party No. 1 to make them permanent and to give them all other benefits of permanent employees and soon after the receipt of the said notice, Party No. 1 did not allow her and other temporary workers to resume duty w.e.f. 20.11.1993 and she was informed by Party No.1 through Shri A. Datta that she would be allowed to resume duty in case of her consenting to work under the Contractor, but she refused the offer, as because, she had already worked

with Party No. 1 for years together and was entitled to be made permanent in service as per the representation dated 18.11.1993 and though she approached Party No. 1 on 21.11.1993 and 22.11.1993, she was not provided with work, so she alongwith the other 17 temporary workers on 22.11.1993 issued another notice, but inspite of the same, no work was provided to them, so they issued another notice through the advocate on 27.11.1993, but Party No. 1 neither replied to the notice nor provided him any work and thereafter also, she continuously approached and requested the Party No. 1 to provide her work, but Party No. 1 did not pay any heed to her request and after waiting for a long time, she approached the Labour Court, Nagpur by filing U.L.P.A. Complaint No. 827 of 1993 and the Labour Court vide its interim order, directed Party No. 1 to reinstate her in service, but no work was provided to her by Party No. 1 and Party No. 1 moved a revision application before the Industrial Court, Nagpur, against the order of the Labour Court raising objection of the Labour Court of having no jurisdiction to entertain and decide the matter pertaining to the establishment of the Central Government.

The further case of the workman is that out of the rest 17 retrenched workers, five workers approached the Asstt. Labour Commissioner (Central), Nagpur (“the ALC” in short) and the said five workers were provided with work by Party No. 1, so she withdrew the case filed by her in the Labour Court, Nagpur and approached the ALC by filing an application under Section 2-A of the Act and the five workers, who had been provided work by Party No. 1 after their approaching the ALC were juniors to her and the ALC issued notice to Party No. 1 and Party No. 1 did not agree for any amicable settlement, so there was failure of the conciliation proceedings and the ALC submitted the failure report to the Central Government.

It is also pleaded by the workman that Party No. 1 had issued experience certificate in her favour and before terminating her services, Party No.1 neither issued one month's notice nor paid notice pay in lieu of the notice or retrenchment compensation as provided under Section 25-F of the Act and therefore, her removal/retrenchment from services is illegal, improper and contrary to law and she is entitled for reinstatement in services with full back wages alongwith all monetary benefits of permanent employee, from the date of joining the service of Party No. 1 till the date of actual reinstatement and work is still available with Party No. 1 and Party No.1 engaged new persons on less wages for more production.

3. The Party No. 1 in the written statement has pleaded inter-alia that it does not have any Managing Director, but only a Director of Handmade Paper Industry, which runs under Khadi and Village Industries Commission (“KVIC” in short) and KVIC is a statutory body, which was created by the statute, “Khadi & Village

Industries Commission Act, 1956” and KVIC is functioning under the Ministry of Industry, Government of India and to achieve the object entrusted to KVIC, several Research and Training Centers were established including the J.B. Research Institute at Wardha, to provide artisan training courses for Handmade Paper Industries, but the unit so established at Wardha was handed over to a local institution, namely, “Khadi Gramodhyog Sangh, Manganwadi, Wardha, for the purpose of continuing the production activities and in 1984, the management of the said unit was taken over by it and it was decided to use the said unit as a demonstration-cum-extension Centre, for conducting experiments and testing etc. and arranging training of skilled workers and two technical persons were posted to look after the work and the unit finally started its Science & Technology (Research) work and for that some workers were engaged on daily wages, from November, 1984 and the work involved were of research and training and therefore not a continuous work and the workers were engaged as per requirements of work and after completion of the work, they were discontinued and none of the workers was engaged on continuous basis and the said unit functioned from 1984 to 1988 and when the unit was doing a prestigious research work of developing a process for making stiff, thick and hard water proof board by using completely waste banana stem, the workers stopped attending the work from 11.01.1988 and when enquiry was made for their non attendance, it was informed that they wanted regular work without break and unless and until their such demand would be fulfilled, they would not join the work.

It is further pleaded by Party No. 1 that six of the daily wages workers lodged complaint with the ALC and worker Shankar Rao Ingle approached the Labour Court, Nagpur and a written statement was filed by KVIC raising the question of jurisdiction and the said case continued till 1991 without adjudication and there was a joint discussion on 18.01.1991, between the six workers, who had made complaint to ALC and the in charge of the unit at Wardha and it was informed to the ALC that under Production Marketing and Training Programme of KVIC, the unit would start functioning from 01.02.1991, where all the six workers could be engaged on daily wages, as such, the ALC closed the case with the instruction to inform him about the appointment and appointment letters dated 28.01.1991 were issued to the said six workers including Shankar Rao Ingle, directing them to join work and out of them, five workers joined their duties and the appointment of Shankar Rao Ingle was made with the condition of withdrawal of the case filed by him, but Shankar Rao Ingle neither withdrew the case nor joined work and one of the conditions of the appointment of the rest five workers was that they would enter into an agreement with its management and the finalization of the agreement took a long time and on 19.11.1993, a meeting was held with all

the workers and in the presence of the then Director, Regional Office, KVIC, Wardha, the workers were requested to enter into the agreement, which was at par with another unit of Handmade Paper at Pune and the workers requested for two to three days time to give their consent, however, on 22.11.1993, the workers sent a letter informing their unwillingness to work on contract basis and that they would work only on daily wages basis and it was surprised to note that when the workers were provided work on daily wages basis in 1988, they demanded continuous work and when they were offered continuous work under Production Marketing and Training Programme in 1991, they refused to enter into an agreement and to work on contract basis, refusing to adhere to the condition of appointment and the workers could not be continued due to their refusal to enter into the agreement and their discontinuance from work was on their own accord and workers had stalled the Research Programme in 1988 and the unit had to remain close till 1991.

Party No. 1 has further pleaded that five workers approached the ALC (Central), Nagpur vide their complaint dated 22.11.1993, complaining that they were illegally terminated and the conciliation proceedings ended in failure and on submission of the failure reports by the ALC (Central), Nagpur, the Central Government refused to refer the cases of the said five workers for adjudication, by order dated 20.01.1995.

The further case of the Party No. 1 is that in the meantime, in the complaints filed by the workers in the Labour Court, Nagpur interim order was passed on 31.05.1994 directing it to reinstate the complainants and it filed revision before the Industrial Court against the order dated 31.05.1994 and on 17.08.1994, by way of pursis, the workers gave the undertaking before the Industrial Court not to proceed with the complaint filed before the Labour Court and in view of the withdrawal of the complaint by the workers, it also withdrew the revision from the Industrial Court on 10.04.1995 and on the basis of the orders of the Ministry, the Directorate of Handmade Paper Industry, Central Office at Mumbai moved a note to the commission to close down the production and Marketing activities of the unit and subsequently, the commission in its 449 the meeting dated 20.12.1995 decided to close down the activities and retrench all daily wage workers and on the basis of the commission's decision, all workers were served with the retrenchment notice alongwith the retrenchment compensation on 09.02.1996 and some workers, who had left the work as far back as 1993 were also given the retrenchment benefit.

The specific case of the Party No. 1 is that the workman was not in its employment since 01.03.1986 and she did not work continuously since the date of her appointment and she worked intermittently on daily wages,

as and when work was available and as the workers denied to enter into an agreement, the production activities were stopped and presently, it is engaged only in providing Artisan training and in the year 1993, there were only two permanent Handmade Paper staff and four JBCRI staff and at present, there are only one Handmade Paper staff and three permanent JBCRI staff and the unit at Wardha had to be closed from 11.01.1988 to 1991, as the daily wage workers left the work and the unit again started functioning from 01.02.1991 and at that time, the workman and other workers were given appointment letters with conditions that they have to enter into an agreement and the claim of the workman that she had put in continuous service of 240 days is false and the workman did not join the work as per the appointment letter dated 31.01.1991 and as such, question of not allowing her to join work does not arise and the workman is not entitled to any relief.

4. In the rejoinder, the workman has denied the allegations made in the written statement and reiterated the facts mentioned in the statement of claim. It is further pleaded by the workman in the rejoinder that she was orally terminated w.e.f. 22.11.1993 and due to the intervention of the ALC, the workers were again allowed to resume their duties and thereafter, the workers demanded for their legitimate rights including payment of wages applicable to them and Party No. 1 with malafide intension decided to stop the work, instead of implementing the statutory law and she was provided with work from 1st, February, 1991 as per the order issued to the workers including herself individually and she worked continuously till 22.11.1993 and she was orally terminated from services w.e.f. 22.11.1993, without service of one month's notice or payment of one month's pay in lieu of notice or retrenchment compensation and her oral termination is illegal, improper and contrary to law.

5. It is to be mentioned here that this reference alongwith references No. 160,162 to 167 and 169 to 178 of 2002 had been disposed of by this Tribunal by a common award dated 27.03.2007, directing the reinstatement of the workman and other petitioners. Being aggrieved by the said award, the Party No. 1 approached the Hon'ble High Court, Nagpur Bench in Writ Petition No. 4503/2007 and the Hon'ble High Court by order dated 25.08.2008 have been pleased to pass the following orders:-

“In view of the above, the impugned award dated 27.03.2007 passed by the Industrial Tribunal -cum-Labour Court, Nagpur in case Nos. 160/2002 to 167/2002 and 169/2002 to 178/2002 is quashed and set aside. The Tribunal is directed to allow the parties to lead further evidence, if they so desire and decided the cases thereafter. The Tribunal is directed to decide the reference in case Nos. 174/2002 to 178/2002 by common or separate awards as he deems fit

and proper on the basis of the evidence led by the parties.”

According to the direction of the Hon’ble High Court, the parties were given the chance of leading further evidence.

The workman, who had examined herself as a witness in support of her case did not adduce further evidence.

However, the Party No. 1 examined two witnesses, namely, Khandeswar Pralhad Gondane and Milind Wakode and produced documentary evidence in support of its case, besides the evidence already adduced.

6. The workman in her evidence on affidavit has reiterated the facts mentioned in the statement of claim and rejoinder. The workman in her cross-examination has stated that she worked continuously from 1986 to November, 1993. She has denied the suggestion that she did not work for 240 days in any calendar year.

7. The first witness for Party No. 1 is Amitabh Datta, an Asstt. Director of Party No. 1. The evidence of witness, Amitabh is on affidavit. In his examination in chief on affidavit, in paragraph 8, this witness has stated that, “the Party No. 2 was given appointment vide letter 23.09.1991 on temporary basis. The appointment was for a fixed period until 31.12.1991, that Party No. 2 however did not join the work.” In paragraph 11 of his affidavit this witness has stated that, “However the unit was again started from 01.02.1991 and the Party No. 2 were served appointment letter dated 28.01.1991 to join, with conditions that they have to enter into an agreement. That when in 1993 the workers including Party No. 2 was asked to sign the agreement. Instead of signing the agreement the workers including Party No. 2 sent letter dated 22.11.1993 informing that they are not ready to work on contract basis and will work on daily wages. That in absence of entering into the agreement which was the condition of appointment the workers could not be given work and they did not work after 22.11.1993. It is denied that party No. 2 was reinstated in service from August,94 to Jan. 1998. It is denied that the retrenchment dated 9.2.1996 was illegal, on the contrary though the Party No. 2 had not worked after 22.11.1993, nor was entitled to, he was given the benefits alongwith other workers. The retrenchment notice alongwith the compensation was sent to all the workers including the Party No. 2.”

In his cross-examination, this witness has stated that he was posted at Wardha from 1984 to 1995 and he knows the workman and the workman was working from 1985 at Wardha. In his cross-examination, this witness has categorically admitted that the workman had worked continuously from 1991 to 1993.

8. The witness no.2 examined by Party No. 1 is Khandeswar Pralhad Gondane. The examination-in-chief on affidavit of this witness is in the line of the stands taken by the Party No. 1 in the written statement. In paragraph 3 of his affidavit, this witness has stated that, “party No. 2 as well as other employees were never in continuous employment with Party No. 1. They had not completed 240 days with Party No.1. Despite this, they were offered with closure compensation alongwith all other legal dues.” Demolishing his own evidence given in the examination-in-chief, in his cross-examination, this witness has stated that he is working with Handmade Paper from 17.07.1992 and the workman was working with Handmade Paper prior to his joining in service and he was also working even after his joining service in 1992. This witness has categorically admitted that the workman worked for more than 240 days in every calendar year.

9. The third witness for Party No.1 is Milind Wakode, the Divisional Director, Nagpur. In his examination-in-chief on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. This witness has further stated that the Handmade Paper Unit at Wardha had been completely closed as per the decision of the commission in its 449tj meeting held on 25.12.1995 and retrenchment notice alongwith compensation was sent to all the workers by letter dated 09/10.02.1996. This witness has also proved the office copy of the termination order as Ext. M-II.

In his cross-examination, this witness has stated that Ext. M-II is dated 09.02.1996 and he cannot say the exact date of termination of the workman and Ext. M-III is the office copy of the order dated 31.01.1991 and Ext.M-III was issued after the engagement of the workman by the management and as per condition No.7 of Ext. M-III, the workman was to execute an agreement as prescribed by the office of Handmade Paper, Khadi Board, Pune and as the workman did not agree to execute any agreement, he was not provided with work or made permanent and the workman was engaged as labourer on daily wages and he does not have any idea as to how the retrenchment compensation paid to the workman was calculated and as per Ext. M-II, retrenchment compensation was paid to the workman for 3 years i.e. for 45 days.

10. At the time of argument, it was submitted by the learned advocate for the workman that the workman was working with the Party No. 1 as an unskilled labourer w.e.f. 01.03.1986 and from the date of her initial appointment, the workman worked continuously and she had completed more than 240 days of work in each calendar year and from the date of completion of 240 days of work, the workman was entitled for regularization in service, but her services were not regularized and the workman was compelled to sign an illegal agreement and when she did not agree to sign the same, she was not allowed to join service from

22.11.1993 and such termination of the workman was without compliance of the mandatory provisions of Section 25-F of the Act and the termination amounts to retrenchment and the termination of the workman is illegal, arbitrary, malafide and contrary to the principles of natural justice and payment of retrenchment compensation in 1996 cannot cure such illegality and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1964 II LLJ-271 [Ambalal Shivlal Vs Vin (D.M.) and others], 1969 II LLJ-373 (Sivanandam Vs Press Superintendent, S. Railway, Madras), 1979 ILLJ-168 (B.M. Gupta Vs State of West Bengal), 1960 I LLJ – 251 (S.C.) (State of Bombay Vs Hospital Mazdoor Sabha) and 1964 I LLJ – 333 (S.C.) (Workmen of Subong Tea Estate Vs Subong Tea Estate).

11. On the other hand, it was submitted by the learned advocate for the Party No. 1 that the terms of the reference is vague and not specific and though, the reference is for adjudication of the legality or otherwise of the termination of the services of the workman, the alleged date of such termination has not been mentioned in the schedule of reference and the date of the alleged termination is very crucial, in absence of which it is not possible for effective adjudication of the dispute and on that score, the reference is not maintainable. It was also submitted by the learned advocate for the Party No. 1 that in the statement of claim filed by the workman also, there is no specific pleading as to when her services were terminated and on that count also, the reference is to be answered in the negative.

It was further submitted by the learned advocate for the Party No. 1 that though the workman was offered engagement on daily wages basis as per office order dated 31.01.1991, she did not join duty and as such, there is no question of termination of the services of the workman and even for the sake of argument, it is held that the workman worked as per office order dated 31.01.1991 on daily wages, the workman has not adduced any legal evidence on record to show that she had worked for 240 days in the preceding 12 months of the date of termination and the onus to prove such fact is on the workman, but she failed to discharge the onus by adducing necessary evidence and as such, she is not entitled for the benefits of the provisions of Section 25-F of the Act and as per the decision of the commissioner, the production activities of the unit was closed down and even though, the workman did not work after 1988, notice pay and retrenchment compensation was sent to her alongwith the retrenchment notice dated 09.02. 1996 and Party No. 1 did not commit any illegality and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the Party No. 1 placed reliance on the decisions reported in the decisions reported in (2002) 3 SCC-25 (Range Forest Officer Vs. S.T. Hadimani), (2004) 8 SCC-195 (Municipal Corporation, Faridabad Vs. Siri Niwas), (2005) 8 SCC-481 (Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh), (2005) 8 SCC-750 (Surendra Nagar District Panchayat vs. Dahyabhai Amarsingh), (2006) 2 SCC-716 (M.P. State Agro Industries Development Corpn. Ltd. vs. S.C. Pandey), (2006) 5 SCC-173 (Municipal Council, Sujanpur vs. Surinder Singh), (2006) 9 SCC-697 (Krishna Bhagyajal Nigam Ltd. vs. Mohd. Rafi), (2006) 9 SCC-132 (Surendranagar Distt. Panchayat vs. Ganga Ben Laljibhai), (2006) 9 SCC-124 Chief Engineer Ranjit Sagar Dam vs. Sham Lal), (2006) 6 SCC-275 (Rajasthan Tourism Development Corporation vs. Intejam Alizafri), (2006) 5 SCC-127 (Nagar Mahapalika vs. State of U.P.), (2006) 1 SCC-106 (R. M. Yellati vs. Asstt. Executive Engineer), (2006) 2 SCC-711 (State of M.P. vs. Arjunlal Rajak), (2007) 13 SCC-343 (Ranip Nagar Palika vs. Babuji Gabhaji Thakore), (2007) 12-172 (State of Maharashtra vs. Dattatraya Digamber Birajdar), 2008 II CLR 1089 (State of Haryana vs. Ramesh Kumar), (2008) 3 SCC-474 (BSNL vs Mahesh Chand), (2008) 5 SCC-171 (Municipal Corporation, Faridabad vs. Durga Prasad) and (2009) 17 SCC-326 (Ajnala Cooperative Sugar Mills Ltd. vs. Sukhraj Singh).

It is settled beyond doubt by the Hon'ble Apex Court in different judgments including the judgments cited by the learned advocate for the party No.1 that where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it is for the claimant to lead evidence to that effect and the workman's affidavit is not sufficient evidence for that purpose.

Keeping in view the principles as mentioned above, now, the present case at hand is to be considered.

12. So far the first contention raised by the learned advocate for the party No.1 regarding the non-mention of the date of termination of the workman from services in the schedule of reference and in the statement of claim is concerned, admittedly, the alleged date of termination of the workman has not been mentioned in the schedule of reference. However, in the statement of claim, in paragraph 4, it has been mentioned by the workman that, "Immediately after the receipt of the notice dated 18.11.1993, the party No.1 had not allowed the party No.2 and his co-workers, who had issued notice to party No.1, to resume duty w.e.f. 20.11.1993." In paragraph 05 of the statement of claim, it has been mentioned that, "The party No. 2 had approached the party No. 1 on 21.11.1993 and subsequently on 22.01.1993, but work was not provided."

In the rejoinder, the workman has specifically in paragraphs 1 and 2 has pleaded that she was orally

terminated from services w.e.f. 22.11.1993. From the materials on record, it is found that for non-mention of the date of the termination of the workman in the schedule of reference, it cannot be said that the reference is not maintainable. Hence I find no force in the contention raised by the learned advocate for the party No.1 in that regard.

13. To prove that she had worked for 240 days in the preceding 12 months of the date of termination, the workman has given her own evidence on affidavit. Though, the workman has not produced any other evidence in support of her such claim, her evidence has been corroborated by the evidence of the witnesses No.1 and 2 of the party No.1. As already mentioned above, Amitabh Datta, the witness No.1 for party No.1 has stated that the workman worked continuously from 1991 to 1993. Khandeswar Pralhad Gondane, witness No. 2 for the party No.1 has stated that the workman worked for more than 240 days in every calendar year.

14. Apart from the oral evidence, the documentary evidence produced by the party No.1 clinches the issue in favour of the workman. The party No.1 has produced and proved the notice of retrenchment dated 09/12.02.1996 issued to the workman as Ext. M-II. In Ext. M-II, it has been mentioned that the workman joined in February, 1991 and worked from February, 1991 to November, 1993 and she is entitled for retrenchment compensation for three years i.e. for 45 days at the rate of 15 days per year. So, it is clear from the materials on record that the workman infact had worked for more than 240 days in the preceding 12 calendar months of the date of his termination i.e. 22.11.1993. It is also found from the materials on record that before the termination of the workman from services, the mandatory provisions of Section 25-F of the Act were not complied with and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to her. So, the termination of the workman from services amounts to retrenchment and such termination is illegal.

Applying the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocate for the workman to the case in hand, it is found that the issuance of the retrenchment notice as per Ext. M-II and sending of the demand draft towards retrenchment compensation and one month's wages on 09/10.02.1996 does not cure the illegality of termination of the services of the workman w.e.f. 22.11.1993.

15. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh) have been pleased to take into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461

(Devinder Singh Vs. Municipal Council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (In charge Officer Vs. Shankar Setty.) and have been pleased to hold that:-

“In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager in 1991, about 23 years back. It is also found that he continued as such till 22.11.1993, when he was terminated from services by party No.1. It is also found that production and marketing activities of the handmade paper unit, Wardha has been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 75,000 (Rupees seventy Five thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Smt. Shashikala Babarao Auchat is illegal and unjustified. The workman is entitled for monetary compensation of Rs.75,000 (Rupees seventy five thousand only) in lieu of reinstatement. She is not entitled for any other relief. The party No.1 is directed to pay the monetary compensation of Rs. 75,000 to the workman, Smt. Shashikala Babarao Auchat within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 per cent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1180.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर हैंडमेड पेपर प्रोडक्शन खादी और विलेज इंडस्ट्रीज कमीशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सी जी आई टी/एनजीपी/162/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था।

[सं. एल-42012/30/95-आईआर (डीयू)]
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March, 2014

S.O. 1180 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/162/2002) of the Cent. Govt. Indus. Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Director, Handmade Paper Production Khadi & Village Industrial Commission and their workmen, which was received by the Central Government on 24-03-2014.

[No. L-42012/30/95-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/162/2002 Date: 03.03.2014.

Party No. 1 : The Director,
Handmade Paper Production
Marketing and Training
Centre,
Khadi & Village Industries
Commission,
Wardha-442001.

Versus

Party No. 2 : Shri Prem Shankar Tiwari,
R/o Kelakar Wadi Layout,
Indira Wadi,
Wardha-442001.

AWARD

(Dated: 3rd March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of

Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Handmade Paper Production and Training Centre and their workmen, Shri Prem Shankar Tiwari, for adjudication, as per letter No.L-42012/30/95-IR(DU) dated 27.03.1996, with the following schedule:-

"Whether the action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Prem Shankar Tiwari was proper, justified and legal? If not, to what relief the workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Prem Shankar Tiwari, ('the workman" in short), filed the statement of claim and the management of Handmade Paper Production and Training Centre ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that Party No. 1 is a Central Government undertaking and is engaged in manufacturing and production of Handmade Papers and in the factory of Party No.1 at Wardha, about 250 permanent employees were working and he was employed by Party No. 1 as a semiskilled worker in December, 1986 and worked continuously and he was being paid @ Rs. 675 per month and though he himself and 17 other workers engaged by Party No.1 worked with Party No. 1 for several years, they were continued as temporary workers.

The further case of the workman is that since the date of his appointment, he worked continuously without any gap and he had put in 240 days of attendance in every year of service, but he was not made permanent in service and even though, he was doing the same work as done by the permanent workers, neither he was paid wages at par with the permanent employees nor given the benefits of bonus, E.S.I. Schemes and Provident Fund Scheme etc. and as Party No. 1 did not issue the attendance-cum-Wage Card to him and the other 17 temporary workers, on 18.11.1993, all of them issued a notice through an advocate to Party No 1 to make them permanent and to give them all other benefits of permanent employees and soon after the receipt of the said notice, Party No. 1 did not allow him and other temporary workers to resume duty w.e.f. 20.11.1993 and he was informed by Party No1 through Shri A. Datta that he would be allowed to resume duty in case of his consenting to work under the Contractor, but he refused the offer, as because, he had already worked with Party No. 1 for years together and was entitled to be made permanent in service as per the representation dated 18.11.1993 and though he approached Party No. 1 on

21.11.1993 and 22.11.1993, he was not provided with work, so he alongwith the other 17 temporary workers on 22.11.1993 issued another notice, but inspite of the same, no work was provided to them, so they issued another notice through the advocate on 27.11.1993, but Party No. 1 neither replied to the notice nor provided him any work and thereafter also, he continuously approached and requested the Party No. 1 to provide him work, but Party No. 1 did not pay any heed to his request and after waiting for a long time, he approached the Labour Court, Nagpur by filing U.L.P.A. Complaint No. 794 of 1993 and the Labour Court vide its interim order, directed Party No. 1 to reinstate him in service, but no work was provided to him by Party No. 1 and Party No. 1 moved a revision application before the Industrial Court, Nagpur, against the order of the Labour Court raising objection of the Labour Court of having no jurisdiction to entertain and decide the matter pertaining to the establishment of the Central Government.

The further case of the workman is that out of the rest 17 retrenched workers, five workers approached the Asstt. Labour Commissioner (Central), Nagpur ("the ALC" in short) and the said five workers were provided with work by Party No. 1, so he withdrew the case filed by him in the Labour Court, Nagpur and approached the ALC by filing an application under Section 2-A of the Act and the five workers, who had been provided work by Party No. 1 after their approaching the ALC were juniors to him and the ALC issued notice to Party No. 1 and Party No. 1 did not agree for any amicable settlement, so there was failure of the conciliation proceedings and the ALC submitted the failure report to the Central Government.

It is also pleaded by the workman that Party No. 1 had issued experience certificate in his favour and before terminating his services, Party No. 1 neither issued one month's notice nor paid notice pay in lieu of the notice or retrenchment compensation as provided under Section 25-F of the Act and therefore, his removal/retrenchment from services is illegal, improper and contrary to law and he is entitled for reinstatement in services with full back wages alongwith all monetary benefits of permanent employee, from the date of joining the service of Party No. 1 till the date of actual reinstatement and work is still available with Party No. 1 and Party No. 1 engaged new persons on less wages for more production.

3. The Party No. 1 in the written statement has pleaded inter-alia that it does not have any Managing Director, but only a Director of Handmade Paper Industry, which runs under Khadi and Village Industries Commission ("KVIC" in short) and KVIC is a statutory body, which was created by the statute, "Khadi & Village Industries commission Act, 1956" and KVIC is functioning under the Ministry of Industry, Government of India and to achieve the object entrusted to KVIC, several Research and

Training Centers were established including the J.B. Research Institute at Wardha, to provide artisan training courses for Handmade Paper Industries, but the unit so established at Wardha was handed over to a local institution, namely, "Khadi Gramodhyog Sangh, Manganwadi, Wardha, for the purpose of continuing the production activities and in 1984, the management of the said unit was taken over by it and it was decided to use the said unit as a demonstration-cum-extension Centre, for conducting experiments and testing etc. and arranging training of skilled workers and two technical persons were posted to look after the work and the unit finally started its Science & Technology (Research) work and for that some workers were engaged on daily wages, from November, 1984 and the work involved were of research and training and therefore not a continuous work and the workers were engaged as per requirements of work and after completion of the work, they were discontinued and none of the workers was engaged on continuous basis and the said unit functioned from 1984 to 1988 and when the unit was doing a prestigious research work of developing a process for making stiff, thick and hard water proof board by using completely waste banana stem, the workers stopped attending the work from 11.01.1988 and when enquiry was made for their non attendance, it was informed that they wanted regular work without break and unless and until their such demand would be fulfilled, they would not join the work.

It is further pleaded by Party No. 1 that six of the daily wages workers lodged complaint with the ALC and worker Shankar Rao Ingle approached the Labour court, Nagpur and a written statement was filed by KVIC raising the question of jurisdiction and the said case continued till 1991 without adjudication and there was a joint discussion on 18.01.1991 between the six workers, who had made complaint to ALC and the incharge of the unit at Wardha and it was informed to the ALC that under Production Marketing and Training Programme of KVIC, the unit would start functioning from 01.02.1991, where all the six workers could be engaged on daily wages, as such, the ALC closed the case with the instruction to inform him about the appointment and appointment letters dated 28.01.1991 were issued to the said six workers including Shankar Rao Ingle, directing them to join work and out of them, five workers joined their duties and the appointment of Shankar Rao Ingle was made with the condition of withdrawal of the case filed by him, but Shankar Rao Ingle neither withdrew the case nor joined work and one of the conditions of appointment of the rest five workers was that they would enter into an agreement with its management and the finalization of the agreement took a long time and on 19.11.1993, a meeting was held with all the workers and in the presence of the then Director, Regional Office, KVIC, Wardha, the workers were requested to enter into the agreement, which was at par

with another unit of Handmade Paper at Pune and the workers requested for two to three days time to give their consent, however, on 22.11.1993, the workers sent a letter informing their unwillingness to work on contract basis and that they would work only on daily wages basis and it was surprised to note that when the workers were provided work on daily wages basis in 1988, they demanded continuous work and when they were offered continuous work under Production Marketing and Training Programme in 1991, they refused to enter into an agreement and to work on contract basis, refusing to adhere to the condition of appointment and the workers could not be continued due to their refusal to enter into the agreement and their discontinuance from work was on their own accord and workers had stalled the Research Programme in 1988 and the unit had to remain close till 1991.

Party No. 1 has further pleaded that five workers approached the ALC (Central), Nagpur vide their complaint dated 22.11.1993, complaining that they were illegally terminated and the conciliation proceedings ended in failure and on submission of the failure reports by the ALC (Central), Nagpur, the Central Government refused to refer the cases of the said five workers for adjudication, by order dated 20.01.1995.

The further case of the Party No. 1 is that in the meantime, in the complaints filed by the workers in the Labour Court, Nagpur interim order was passed on 31.05.1994 directing it to reinstate the complainants and it filed revision before the Industrial Court against the order dated 31.05.1994 and on 17.08.1994, by way of pursis, the workers gave the undertaking before the Industrial Court not to proceed with the complaint filed before the Labour Court and in view of the withdrawal of the complaint by the workers, it also withdrew the revision from the Industrial Court on 10.04.1995 and on the basis of the orders of the Ministry, the Directorate of Handmade Paper Industry, Central Office at Mumbai moved a note to the commission to close down the production and Marketing activities of the unit and subsequently, the commission in its 449th meeting dated 20.12.1995 decided to close down the activities and retrench all daily wage workers and on the basis of the commission's decision, all workers were served with the retrenchment notice alongwith the retrenchment compensation on 09.02.1996 and some workers, who had left the work as far back as 1993 were also given the retrenchment benefit.

The specific case of the Party No. 1 is that the workman was not in its employment since December, 1986 and he did not work continuously since the date of his appointment and he worked intermittently on daily wages, as and when work was available and as the workers denied to enter into an agreement, the production activities were stopped and presently, it is engaged only in providing

Artisan training and in the year 1993, there were only two permanent Handmade Paper staff and four JBCRI staff and at present, there are only one Handmade Paper staff and three permanent JBCRI staff and the unit at Wardha had to be closed from 11.01.1988 to 1991, as the daily wage workers left the work and the unit again started functioning from 01.02.1991 and at that time, the workman and other workers were given appointment letters with conditions that they have to enter into an agreement and the workman was appointed from 23.09.1991 and the claim of the workman that he had put in continuous service of 240 days is false and the workman refused to enter into the agreement and did not join the work after 22.11.1993 and as such, question of not allowing him to join work does not arise and the workman is not entitled to any relief.

4. In the rejoinder, the workman has denied the allegations made in the written statement and reiterated the facts mentioned in the statement of claim. It is further pleaded by the workman in the rejoinder that he was orally terminated w.e.f. 22.11.1993 and due to the intervention of the ALC, the workers were again allowed to resume their duties and thereafter, the workers demanded for their legitimate rights including payment of wages applicable to them and Party No. 1 with malafide intension decided to stop the work, instead of implementing the statutory law and he was provided with work from 1st, February, 1991 as per the order issued to the workers including himself individually and he worked continuously till 22.11.1993 and he was orally terminated from services w.e.f. 22.11.1993, without service of one month's notice or payment of one month's pay in lieu of notice or retrenchment compensation and his oral termination is illegal, improper and contrary to law.

5. It is to be mentioned here that this reference alongwith references No. 160, 161, 162 to 167 and 169 to 178 of 2002 had been disposed of by this Tribunal by a common award dated 27.03.2007, directing the reinstatement of the workman and other petitioners. Being aggrieved by the said award, the Party No. 1 approached the Hon'ble High Court, Nagpur Bench in Writ Petition No. 4503/2007 and the Hon'ble High Court by order dated 25.08.2008 have been pleased to pass the following orders:-

“In view of the above, the impugned award dated 27.03.2007 passed by the Industrial Tribunal –cum-Labour Court, Nagpur in case Nos. 160/2002 to 167/2002 and 169/2002 to 178/2002 is quashed and set aside. The Tribunal is directed to allow the parties to lead further evidence, if they so desire and decided the cases thereafter. The Tribunal is directed to decide the reference in case Nos. 174/2002 to 178/2002 by common or separate awards as he deems fit and proper on the basis of the evidence led by the parties.”

According to the direction of the Hon'ble High Court, the parties were given the chance of leading further evidence.

The workman, who had examined himself as a witness in support of his case did not adduce further evidence.

However, the Party No. 1 examined two witnesses, namely, Khandeswar Pralhad Gondane and Milind Wakode and produced documentary evidence in support of its case, besides the evidence already adduced.

6. The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim and rejoinder. The workman in his cross-examination has stated that he worked continuously from December, 1986 to 10.01.1988. He has denied the suggestion that he did not work for 240 days in any calendar year.

7. The first witness for Party No. 1 is Amitabh Datta, an Asstt. Director of Party No. 1. The evidence of witness, Amitabh is on affidavit. In his examination in chief on affidavit, in paragraph 8, this witness has stated that, "the party No.2 was given appointment vide letter 23.09.1991 on temporary basis. The appointment was for a fixed period until 31.12.1991, that party No.2 however did not join the work." In paragraph 11 of his affidavit this witness has stated that, "However the unit was again started from 01.02.1991 and the Party No. 2 were served appointment letter dated 28.01.1991 to join, with conditions that they have to enter into an agreement. That when in 1993 the workers including Party No. 2 was asked to sign the agreement. Instead of signing the agreement the workers including Party No. 2 sent letter dated 22.11.1993 informing that they are not ready to work on contract basis and will work on daily wages. That in absence of entering into the agreement which was the condition of appointment the workers could not be given work and they did not work after 22.11.1993. It is denied that party No.2 was reinstated in service from August,94 to Jan. 1998. It is denied that the retrenchment dated 9.2.1996 was illegal, on the contrary though the Party No. 2 had not worked after 22.11.1993, nor was entitled to, he was given the benefits alongwith other workers. The retrenchment notice alongwith the compensation was sent to all the workers including the Party No. 2."

In his cross-examination, this witness has stated that he was posted at Wardha from 1984 to 1995 and he knows the workman and the workman was working from 1985 at Wardha. In his cross-examination, this witness has categorically admitted that the workman had worked continuously from 1991 to 1993.

8. The witness no.2 examined by Party No. 1 is Khandeswar Pralhad Gondane. The examination-in-chief on affidavit of this witness is in the line of the stands taken by the Party No. 1 in the written statement. In paragraph

3 of his affidavit, this witness has stated that, "party no. 2 as well as other employees were never in continuous employment with Party No. 1. They had not completed 240 days with Party No.1. Despite this, they were offered with closure compensation alongwith all other legal dues." Demolishing his own evidence given in the examination-in-chief, in his cross-examination, this witness has stated that he is working with Handmade Paper from 17.07.1992 and the workman was working with Handmade Paper prior to his joining in service and he was also working even after his joining service in 1992. This witness has categorically admitted that the workman worked for more than 240 days in every calendar year.

9. The third witness for Party No.1 is Milind Wakode, the Divisional Director, Nagpur. In his examination-in-chief on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. This witness has further stated that the Handmade Paper Unit at Wardha had been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995 and retrenchment notice alongwith compensation was sent to all the workers by letter dated 09/10.02.1996. This witness has also proved the office copy of the termination order as Ext. M-II.

In his cross-examination, this witness has stated that Ext. M-II is dated 09.02.1996 and he cannot say the exact date of termination of the workman and Ext. M-III is the office copy of the order dated 31.01.1991 and Ext.M-III was issued after the engagement of the workman by the management and as per condition No.7 of Ext. M-III, the workman was to execute an agreement as prescribed by the office of Handmade Paper, Khadi Board, Pune and as the workman did not agree to execute any agreement, he was not provided with work or made permanent and the workman was engaged as labourer on daily wages and he does not have any idea as to how the retrenchment compensation paid to the workman was calculated and as per Ext. M-II, retrenchment compensation was paid to the workman for 3 years i.e. for 45 days.

10. At the time of argument, it was submitted by the learned advocate for the workman that the workman was working with the Party No. 1 as a semiskilled labourer w.e.f. December,1986 and from the date of his initial appointment, the workman worked continuously and he had completed more than 240 days of work in each calendar year and from the date of completion of 240 days of work, the workman was entitled for regularization in service, but his services were not regularized and the workman was compelled to sign an illegal agreement and when he did not agree to sign the same, he was not allowed to join service from 22.11.1993 and such termination of the workman was without compliance of the mandatory provisions of Section 25-F of the Act and the termination amounts to retrenchment and the termination of the

workman is illegal, arbitrary, malafide and contrary to the principles of natural justice and payment of retrenchment compensation in 1996 cannot cure such illegality and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1964 II LLJ-271 [Ambalal Shivlal Vs Vin (D.M.) and others], 1969 II LLJ-373 (Sivanandam Vs Press Superintendent, S. Railway, Madras), 1979 ILLJ-168 (B.M. Gupta Vs State of West Bengal), 1960 I LLJ – 251 (S.C.) (State of Bombay Vs Hospital Mazdoor Sabha) and 1964 I LLJ – 333 (S.C.) (Workmen of Subong Tea Estate Vs Subong Tea Estate).

11. On the other hand, it was submitted by the learned advocate for the Party No. 1 that the terms of the reference is vague and not specific and though, the reference is for adjudication of the legality or otherwise of the termination of the services of the workman, the alleged dated of such termination has not been mentioned in the schedule of reference and the date of the alleged termination is very crucial, in absence of which it is not possible for effective adjudication of the dispute and on that score, the reference is not maintainable. It was also submitted by the learned advocate for the Party No. 1 that in the statement of claim filed by the workman also, there is no specific pleading as to when his services were terminated and on that count also, the reference is to be answered in the negative.

It was further submitted by the learned advocate for the Party No. 1 that the workman was offered engagement on daily wages basis as per office order dated 23.09.1991 and the workman from 22.11.1993 did not join duty after refusing to enter into the agreement and as such, there is no question of termination of the services of the workman and the workman has not adduced any legal evidence on record to show that he had worked for 240 days in the preceding 12 months of the date of termination and the onus to prove such fact is on the workman, but he failed to discharge the onus by adducing necessary evidence and as such, he is not entitled for the benefits of the provisions of Section 25-F of the Act and as per the decision of the commissioner, the production activities of the unit was closed down and even though, the workman did not work after 1988, notice pay and retrenchment compensation was sent to him alongwith the retrenchment notice dated 09.02.1996 and Party No. 1 did not commit any illegality and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the Party No. 1 placed reliance on the decisions reported in the decisions reported in (2002) 3 SCC-25 (Range Forest Officer Vs. S.T. Hadimani), (2004) 8

SCC-195 (Municipal Corporation, Faridabad Vs. Sri Niwas), (2005) 8 SCC-481 (Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh), (2005) 8 SCC-750 (Surendra Nagar District Panchayat vs. Dahyabhai Amarsingh), (2006) 2 SCC-716 (M.P. State Agro Industries Development Corpn. Ltd. vs. S.C. pandey), (2006) 5 SCC-173 (Municipal Council, Sujanpur vs. Surinder Singh), (2006) 9 SCC-697 (Krishna Bhagyajal Nigam Ltd. vs. Mohd. Rafi), (2006) 9 SCC-132 (Surendranagar Distt. Panchayat vs. Ganga Ben Laljibhai), (2006) 9 SCC-124 (Chief Engineer Ranjit Sagar Dam vs. Sham Lal), (2006) 6 SCC-275 (Rajasthan Tourism Development Corporation vs. Intejam Alizafri), (2006) 5 SCC-127 (Nagar Mahapalika vs. State of U.P.), (2006) 1 SCC-106 (R.M. Yellati vs. Asstt. Executive Engineer), (2006) 2 SCC-711 (State of M.P. vs. Arjunlal Rajak), (2007) 13 SCC-343 (Ranip Nagar Palika vs. Babuji Gabhaji Thakore), (2007) 12-172 (State of Maharashtra vs. Dattatraya Digamber Birajdar), 2008 II CLR 1089 (State of Haryana vs. Ramesh Kumar), 92008) 3 SCC-474 (BSNL vs. Mahesh Chand), (2008) 5 SCC-171 (Municipal Corporation, Faridabad vs. Durga Prasad) and (2009) 17 SCC-326 (Ajnala Cooperative Sugar Mills Ltd. vs. Sukhraj Singh).

It is settled beyond doubt by the Hon'ble Apex Court in different judgments including the judgments cited by the learned advocate for the party No.1 that where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it is for the claimant to lead evidence to that effect and the workman's affidavit is not sufficient evidence for that purpose.

Keeping in view the principles as mentioned above, now, the present case at hand is to be considered.

12. So far the first contention raised by the learned advocate for the party No.1 regarding the non-mention of the date of termination of the workman from services in the schedule of reference and in the statement of claim is concerned, admittedly, the alleged date of termination of the workman has not been mentioned in the schedule of reference. However, in the statement of claim, in paragraph 4, it has been mentioned by the workman that, "Immediately after the receipt of the notice dated 18.11.1993, the party No.1 had not allowed the party No.2 and his co-workers, who had issued notice to party No.1, to resume duty w.e.f. 20.11.1993." In paragraph 05 of the statement of claim, it has been mentioned that, "The party No.2 had approached the party No.1 on 21.11.1993 and subsequently on 22.01.1993, but work was not provided."

In the rejoinder, the workman has specifically in paragraphs 1 and 2 has pleaded that he was orally terminated from services w.e.f. 22.11.1993. From the materials on record, it is found that for non-mention of the date of the termination of the workman in the schedule of reference, it cannot be said that the reference is not

maintainable. Hence I find no force in the contention raised by the learned advocate for the party No.1 in that respect.

13. To prove that he had worked for 240 days in the preceding 12 months of the date of termination, the workman has given his own evidence on affidavit. Though, the workman has not produced any other evidence in support of his such claim, his evidence has been corroborated by the evidence of the witnesses no.1 and 2 of the party No.1. As already mentioned above, Amitabh Datta, the witness No.1 for party No.1 has stated that the workman worked continuously from 1991 to 1993. Khandeswar Pralhad Gondane, witness No.2 for the party No.1 has stated that the workman worked for more than 240 days in every calendar year.

14. Apart from the oral evidence, the documentary evidence produced by the party No.1 clinches the issue in favour of the workman. The party No.1 has produced and proved the notice of retrenchment dated 09/12.02.1996 issued to the workman as Ext. M-II. In Ext. M-II, it has been mentioned that the workman joined in February, 1991 and worked from September, 1991 to November, 1993 and he is entitled for retrenchment compensation for two years i.e. for 30 days at the rate of 15 days per year. So, it is clear from the materials on record that the workman infact had worked for more than 240 days in the preceding 12 calendar months of the date of his termination i.e. 22.11.1993. It is also found from the material on record that before the termination of the workman from services, the mandatory provisions of Section 25-F of the Act were not complied with and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him. So, the termination of the workman from services amounts to retrenchment and such termination is illegal.

Applying the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocate for the workman to the case in hand, it is found that the issuance of the retrenchment notice as per Ext. M-II and sending of the demand draft towards retrenchment compensation and one month's wages on 09/10.02.1996 does not cure the illegality of termination of the services of the workman w.e.f. 22.11.1993.

15. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh) have been pleased to take into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal Council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-

126 (In charge Officer Vs. Shankar Setty.) and have been pleased to hold that:-

"In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager in 1991, about 23 years back. It is also found that he continued as such till 22.11.1993, when he was terminated from services by party no.1. It is also found that production and marketing activities of the handmade paper unit, Wardha has been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 60,000 (Rupees sixty thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Prem Shankar Tiwari is illegal and unjustified. The workman is entitled for monetary compensation of Rs.60,000 (Rupees sixty thousand only) in lieu of reinstatement. He is not entitled for any other relief. The party no.1 is directed to pay the monetary compensation of Rs. 60,000 to the workman Shri Prem Shankar Tiwari within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 percent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1181.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर हैंडमेड पेपर प्रोडक्शन खादी और विलेज इंडस्ट्रीज कमीशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सी जी आई टी/एनजीपी/178/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था।

[सं. एल-42012/120/96-आईआर (डीयू)
पी.के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March, 2014

S.O. 1181.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/178/2002) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Director, Handmade Paper Production Khadi & Village Industrial Commission and their workman, which was received by the Central Government on 24-03-2014.

[No. L-42012/120/96-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/178/2002 Date: 03.03.2014.

Party No. 1 : The Director,
Handmade Paper Production
Marketing and Training Centre,
Khadi & Village Industries
Commission,
Wardha-442001.

Versus

Party No. 2 : Shri Raju Sureshrao Rewatkar,
R/o Ramnagar,
Near Datta Mandir,
Ward No. 27,
Wardha – 442001.

AWARD

(Dated: 3rd March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Handmade Paper Production and Training Centre and their workman, Shri Raju Sureshrao Rewatkar, for adjudication, as per letter No.L-42012/120/96-IR(DU) dated 09.07.1997, with the following schedule:-

"Whether the action of the management of the Director, Khadi and Village Industrial Commission, Handmade Paper Production, Marketing and Training Centre, J.B. Central Research Institute, Manganwadi, Wardha in terminating the services of Shri Raju Sureshrao Rewatkar, an unskilled worker w.e.f. 12.02.1996 by way of retrenchment is legal, proper and just? If not, to what relief the worker is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Raju Sureshrao Rewatkar, ("the workman" in short), filed the statement of claim and the management of Handmade Paper Production and Training Centre, Wardha ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that Party No. 1 is a Central Government undertaking and is engaged in manufacturing and production of Handmade Papers and in the factory of Party No. 1 at Wardha, about 250 permanent employees were working and he was employed by Party No. 1 as an unskilled worker in February, 1991 and worked continuously and he was being paid @ Rs. 675/- per month and though he himself and 17 other workers engaged by Party No. 1 worked with Party No. 1 for several years, they were continued as temporary workers.

The further case of the workman is that since the date of his appointment, he worked continuously without any gap and he had put in 240 days of attendance in every year of service, but he was not made permanent in service and even though, he was doing the same work as done by the permanent workers, neither he was paid wages at par with the permanent employees nor given the benefits of bonus, E.S.I. Schemes and Provident Fund Scheme etc. and as Party No. 1 did not issue the attendance-cum-Wage Card to him and the other 17 temporary workers, on 18.11.1993, all of them issued a notice through an advocate to Party No 1 to make them permanent and to give them all other benefits of permanent employees and soon after the receipt of the said notice, Party No. 1 did not allow him and other temporary workers to resume duty w.e.f. 20.11.1993 and he was informed by Party No1 through Shri A. Datta that he would be allowed to resume duty in case of his consenting to work under the Contractor, but

he refused the offer, as because, he had already worked with Party No. 1 for years together and was entitled to be made permanent in service as per the representation dated 18.11.1993 and though he approached Party No. 1 on 21.11.1993 and 22.11.1993, he was not provided with work, so he alongwith the other 17 temporary workers on 22.11.1993 issued another notice, but inspite of the same, no work was provided to them, so they issued another notice through the advocate on 27.11.1993, but Party No. 1 neither replied to the notice nor provided him any work and thereafter also, he continuously approached and requested the Party No. 1 to provide him work, but Party No. 1 did not pay any heed to his request and after waiting for a long time, he approached the Labour Court, Nagpur by filing U.L.P.A. Complaint No. 765 of 1993 and the Labour Court vide its interim order, directed Party No. 1 to reinstate him in service, but no work was provided to him by Party No. 1 and Party No. 1 moved a revision application before the Industrial Court, Nagpur, against the order of the Labour Court raising objection of the Labour Court of having no jurisdiction to entertain and decide the matter pertaining to the establishment of the Central Government.

The further case of the workman is that out of the rest 17 retrenched workers, five workers approached the Asstt. Labour Commissioner (Central), Nagpur ("the ALC" in short) and the said five workers were provided with work by Party No. 1, so he withdrew the case filed by him in the Labour Court, Nagpur and approached the ALC by filing an application under Section 2-A of the Act and the five workers, who had been provided work by Party No. 1 after their approaching the ALC were juniors to him and the ALC issued notice to Party No. 1 and Party No. 1 did not agree for any amicable settlement, so there was failure of the conciliation proceedings and the ALC submitted the failure report to the Central Government.

It is also pleaded by the workman that Party No. 1 had issued experience certificate in his favour and before terminating his services, Party No. 1 neither issued one month's notice nor paid notice pay in lieu of the notice or retrenchment compensation as provided under Section 25-F of the Act and therefore, his removal/retrenchment from services is illegal, improper and contrary to law and he is entitled for reinstatement in services with full back wages alongwith all monetary benefits of permanent employee, from the date of joining the service of Party No. 1 till the date of actual reinstatement and work is still available with Party No. 1 and Party No. 1 engaged new persons on less wages for more production.

The further case of the workman is that he was reinstated in service by Party No. 1 in August, 1994 and he worked till January, 1996 and he was again retrenched from

services vide notice dated 09.02.1996 and the retrenchment was itself illegal, as because, the Party No. 1 did not pay all the legal dues at the time of retrenchment compensation was not paid in accordance with law and his retrenchment was again challenged before the ALC (C), Nagpur and the conciliation proceedings ended in failure, the reference had been made by the Central Govt. for adjudication.

3. The Party No. 1 in the written statement has pleaded inter-alia that it does not have any Managing Director, but only a Director of Handmade Paper Industry, which runs under Khadi and Village Industries Commission ("KVIC" in short) and KVIC is a statutory body, which was created by the statute, "Khadi & Village Industries commission Act, 1956" and KVIC is functioning under the Ministry of Industry, Government of India and to achieve the object entrusted to KVIC, several Research and Training Centers were established including the J.B. Research Institute at Wardha, to provide artisan training courses for Handmade Paper Industries, but the unit so established at Wardha was handed over to a local institution, namely, "Khadi Gramodhyog Sangh, Manganwadi, Wardha, for the purpose of continuing the production activities and in 1984, the management of the said unit was taken over by it and it was decided to use the said unit as a demonstration-cum-extension Centre, for conducting experiments and testing etc. and arranging training of skilled workers and two technical persons were posted to look after the work and the unit finally started its Science & Technology (Research) work and for that some workers were engaged on daily wages, from November, 1984 and the work involved were of research and training and therefore not a continuous work and the workers were engaged as per requirements of work and after completion of the work, they were discontinued and none of the workers was engaged on continuous basis and the said unit functioned from 1984 to 1988 and when the unit was doing a prestigious research work of developing a process for making stiff, thick and hard water proof board by using completely waste banana stem, the workers stopped attending the work from 11.01.1988 and when enquiry was made for their non attendance, it was informed that they wanted regular work without break and unless and until their such demand would be fulfilled, they would not join the work.

It is further pleaded by Party No. 1 that six of the daily wages workers lodged complaint with the ALC and worker Shankar Rao Ingle approached the Labour Court, Nagpur and a written statement was filed by KVIC raising the question of jurisdiction and the said case continued till 1991 without adjudication and there was a joint discussion on 18.01.1991 between the six workers, who had made complaint to ALC and the in charge of the unit at Wardha and it was informed to the ALC that under Production Marketing and Training Programme of KVIC, the unit would start functioning from 01.02.1991, where all

the six workers could be engaged on daily wages, as such, the ALC closed the case with the instruction to inform him about the appointment and appointment letters dated 28.01.1991 were issued to the said six workers including Shankar Rao Ingle, directing them to join work and out of them, five workers joined their duties and the appointment of Shankar Rao Ingle was made with the condition of withdrawal of the case filed by him, but Shankar Rao Ingle neither withdrew the case nor joined work and one of the conditions of appointment of the rest five workers was that they would enter into an agreement with its management and the finalization of the agreement took a long time and on 19.11.1993, a meeting was held with all the workers and in the presence of the then Director, Regional Office, KVIC, Wardha, the workers were requested to enter into the agreement, which was at par with another unit of Handmade Paper at Pune and the workers requested for two to three days time to give their consent, however, on 22.11.1993, the workers sent a letter informing their unwillingness to work on contract basis and that they would work only on daily wages basis and it was surprised to note that when the workers were provided work on daily wages basis in 1988, they demanded continuous work and when they were offered continuous work under Production Marketing and Training Programme in 1991, they refused to enter into an agreement and to work on contract basis, refusing to adhere to the condition of appointment and the workers could not be continued due to their refusal to enter into the agreement and their discontinuance from work was on their own accord and workers had stalled the Research Programme in 1988 and the unit had to remain close till 1991.

Party No. 1 has further pleaded that five workers approached the ALC (Central), Nagpur vide their complaint dated 22.11.1993, complaining that they were illegally terminated and the conciliation proceedings ended in failure and on submission of the failure reports by the ALC (Central), Nagpur, the Central Government refused to refer the cases of the said five workers for adjudication, by order dated 20.01.1995.

The further case of the Party No. 1 is that in the meantime, in the complaints filed by the workers in the Labour Court, Nagpur interim order was passed on 31.05.1994 directing it to reinstate the complainants and it filed revision before the Industrial Court against the order dated 31.05.1994 and on 17.08.1994, by way of pursis, the workers gave the undertaking before the Industrial Court not to proceed with the complaint filed before the Labour Court and in view of the withdrawal of the complaint by the workers, it also withdrew the revision from the Industrial Court on 10.04.1995 and on the basis of the orders of the Ministry, the Directorate of Handmade Paper Industry, Central Office at Mumbai moved a note to the commission to close down the production and

Marketing activities of the unit and subsequently, the commission in its 449th the meeting dated 20.12.1995 decided to close down the activities and retrench all daily wage workers and on the basis of the commission's decision, all workers were served with the retrenchment notice alongwith the retrenchment compensation on 09.02.1996 and some workers, who had left the work as far back as 1993 were also given the retrenchment benefit.

The specific case of the Party No. 1 is that the workman was given appointment from February, 1991 on temporary basis for a fixed period till 31.12.1991 and he did not work continuously since the date of his appointment and he worked intermittently on daily wages, as and when work was available and as the workers denied to enter into an agreement, the production activities were stopped and presently, it is engaged only in providing Artisan training and in the year 1993, there were only two permanent Handmade Paper staff and four JBCRI staff and at present, there are only one Handmade Paper staff and three permanent JBCRI staff and the unit at Wardha had to be closed from 11.01.1988 to 1991, as the daily wage workers left the work and the unit again started functioning from 01.02.1991 and the workman approached it for appointment and on assurance of the workman to enter into an agreement, he was appointed from 23.09.1991, but in November, 1993, when the workman was asked to enter into an agreement, he refused as was done by other workers and due to the refusal of the workman for entering into the agreement, which was the condition of appointment in 1991, he could not be given work and the workman was not reinstated in service in August, 1994 and it is false to state that he worked till January, 1996 and the claim of the workman that he had put in continuous service of 240 days is false and as such, question of not allowing him to join work does not arise and the workman is not entitled to any relief.

4. In the rejoinder, the workman has denied the allegations made in the written statement and reiterated the facts mentioned in the statement of claim. It is further pleaded by the workman in the rejoinder that he was orally terminated w.e.f. 22.11.1993 and due to the intervention of the ALC, the workers were again allowed to resume their duties and thereafter, the workers demanded for their legitimate rights including payment of wages applicable to them and Party No. 1 with malafide intension decided to stop the work, instead of implementing the statutory law and he was provided with work from 1st, February, 1991 as per the order issued to the workers including himself individually and he worked continuously till 22.11.1993 and he was orally terminated from services w.e.f. 22.11.1993, without service of one month's notice or payment of one month's pay in lieu of notice or retrenchment compensation and his oral termination is illegal, improper and contrary to law.

5. It is to be mentioned here that this reference alongwith references No. 160 to 167, 169 to 177 of 2002 had been disposed of by this Tribunal by a common award dated 27.03.2007, directing the reinstatement of the workman and other petitioners. Being aggrieved by the said award, the Party No. 1 approached the Hon'ble High Court, Nagpur Bench in Writ Petition No. 4503/2007 and the Hon'ble High Court by order dated 25.08.2008 have been pleased to pass the following orders:-

“In view of the above, the impugned award dated 27.03.2007 passed by the Industrial Tribunal –cum-Labour Court, Nagpur in case Nos. 160/2002 to 167/2002, 169/2002 to 173 and 175 to 178/2002 is quashed and set aside. The Tribunal is directed to allow the parties to lead further evidence, if they so desire and decided the cases thereafter. The Tribunal is directed to decide the reference in case Nos. 174/2002 to 178/2002 by common or separate awards as he deems fit and proper on the basis of the evidence led by the parties.”

According to the direction of the Hon'ble High Court, the parties were given the chance of leading further evidence.

The workman, who had examined himself as a witness in support of his case did not adduce further evidence.

However, the Party No. 1 examined two witnesses, namely, Khandeswar Pralhad Gondane and Milind Wakode and produced documentary evidence in support of its case, besides the evidence already adduced.

6. The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim and rejoinder. The workman in his cross-examination has stated that he worked continuously from 1985 to November, 1993. He has denied the suggestion that he did not work for 240 days in any calendar year. The workman in his cross-examination has further stated that on 09.02.1996, one registered letter, M-2 was sent to him, but he returned the same. The workman has admitted that the factory was closed from 1988 to 1991 and he did not work from January, 1988.

7. The first witness for Party No. 1 is Amitabh Datta, an Asstt. Director of Party No. 1. The evidence of witness, Amitabh is on affidavit. In his examination in chief on affidavit, in paragraph 8, this witness has stated that, “the party No.2 was given appointment vide letter 23.09.1991 on temporary basis. The appointment was for a fixed period until 31.12.1991, that party No.2 however did not join the work.” In paragraph 11 of his affidavit this witness has stated that, “However the unit was again started from

01.02.1991 and the Party No. 2 were served appointment letter dated 28.01.1991 to join, with conditions that they have to enter into an agreement. That when in 1993 the workers including Party No. 2 was asked to sign the agreement. Instead of signing the agreement the workers including Party No. 2 sent letter dated 22.11.1993 informing that they are not ready to work on contract basis and will work on daily wages. That in absence of entering into the agreement which was the condition of appointment the workers could not be given work and they did not work after 22.11.1993. It is denied that party No.2 was reinstated in service from August, 94 to Jan. 1998. It is denied that the retrenchment dated 9.2.1996 was illegal, on the contrary though the Party No. 2 had not worked after 22.11.1993, nor was entitled to, he was given the benefits alongwith other workers. The retrenchment notice alongwith the compensation was sent to all the workers including the Party No. 2.”

In his cross-examination, this witness has stated that he was posted at Wardha from 1984 to 1995 and he knows the workman and the workman was working from 1985 at Wardha. In his cross-examination, this witness has categorically admitted that the workman had worked continuously from 1991 to 1993.

8. The witness No.2 examined by Party No. 1 is Khandeswar Pralhad Gondane. The examination-in-chief on affidavit of this witness is in the line of the stands taken by the Party No. 1 in the written statement. In paragraph 3 of his affidavit, this witness has stated that, “party no. 2 as well as other employees were never in continuous employment with Party No. 1. They had not completed 240 days with Party No.1. Despite this, they were offered with closure compensation alongwith all other legal dues.” Demolishing his own evidence given in the examination-in-chief, in his cross-examination, this witness has stated that he is working with Handmade Paper from 17.07.1992 and the workman was working with Handmade Paper prior to his joining in service and he was also working even after his joining service in 1992. This witness has categorically admitted that the workman worked for more than 240 days in every calendar year.

9. The third witness for Party No. 1 is Milind Wakode, the Divisional Director, Nagpur. In his examination-in-chief on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. This witness has further stated that the Handmade Paper Unit at Wardha had been completely closed as per the decision of the commission in its 449^t meeting held on 25.12.1995 and retrenchment notice alongwith compensation was sent to all the workers by letter dated 09/10.02.1996. This witness has also proved the office copy of the termination order as Ext. M-II.

In his cross-examination, this witness has stated that Ext. M-II is dated 09.02.1996 and he cannot say the exact date of termination of the workman and Ext. M-III is the office copy of the order dated 31.01.1991 and Ext. M-III was issued after the engagement of the workman by the management and as per condition No.7 of Ext. M-III, the workman was to execute an agreement as prescribed by the office of Handmade Paper, Khadi Board, Pune and as the workman did not agree to execute any agreement, he was not provided with work or made permanent and the workman was engaged as labourer on daily wages and he does not have any idea as to how the retrenchment compensation paid to the workman was calculated and as per Ext. M-II, retrenchment compensation was paid to the workman for 3 years i.e. for 45 days.

10. At the time of argument, it was submitted by the learned advocate for the workman that the workman was working with the Party No. 1 as an unskilled worker from February, 1991 and from the date of his initial appointment, the workman worked continuously and he had completed more than 240 days of work in each calendar year and from the date of completion of 240 days of work, the workman was entitled for regularization in service, but his services were not regularized and the workman was compelled to sign an illegal agreement and when he did not agree to sign the same, he was not allowed to join service from 22.11.1993 and the workman was again reinstated in service in August, 1994 and he worked till January, 1996 and again he was terminated from services and such terminations of the workman was without compliance of the mandatory provisions of Section 25-F of the Act and the termination amounts to retrenchment and the termination of the workman is illegal, arbitrary, malafide and contrary to the principles of natural justice and payment of retrenchment compensation in 1996 cannot cure such illegality and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1964 II LLJ-271 [Ambalal Shivlal Vs Vin (D.M.) and Others], 1969 II LLJ-373 (Sivanandam Vs Press Superintendent, S. Railway, Madras), 1979 I LLJ-168 (B.M. Gupta Vs State of West Bengal), 1960 I LLJ – 251 (S.C.) (State of Bombay Vs Hospital Mazdoor Sabha) and 1964 I LLJ – 333 (S.C.) (Workmen of Subong Tea Estate Vs Subong Tea Estate).

11. On the other hand, it was submitted by the learned advocate for the Party No. 1 that the workman was given appointment on temporary basis for a fixed period i.e. till 31.12.1991 and he did not work continuously since the date of his appointment and he worked intermittently on daily wages as and when work was available and he did not complete 240 days of work in the

preceding 12 calendar months of the alleged date of termination and the workman has not adduced any legal evidence on record to show that he had worked for 240 days in the preceding 12 months of the date of termination and the onus to prove such fact is on the workman, but he failed to discharge the onus by adducing necessary evidence and as such, he is not entitled for the benefits of the provisions of Section 25-F of the Act and as per the decision of the commissioner, the production activities of the unit was closed down and even though, the workman did not work after 1988, notice pay and retrenchment compensation was sent to him alongwith the retrenchment notice dated 09.02.1996 and Party No. 1 did not commit any illegality and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the Party No. 1 placed reliance on the decisions reported in the decisions reported in (2002) 3 SCC-25 (Range Forest Officer Vs. S.T. Hadimani), (2004) 8 SCC-195 (Municipal Corporation, Faridabad Vs. Siri Niwas), (2005) 8 SCC-481 (Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh), (2005) 8 SCC-750 (Surendra Nagar District Panchayat Vs. Dahyabhai Amarsingh), (2006) 2 SCC-716 (M.P. State Agro Industries Development Corpn. Ltd. vs. S.C. Pandey), (2006) 5 SCC-173 (Municipal Council, Sujanpur vs. Surinder Singh), (2006) 9 SCC-697 (Krishna Bhagyajal Nigam Ltd. vs. Mohd. Rafi), (2006) 9 SCC-132 (Surendranagar Distt. Panchayat vs. Ganga Ben Laljibhai), (2006) 9 SCC-124 Chief Engineer Ranjit Sagar Dam vs. Sham Lal), (2006) 6 SCC-275 (Rajasthan Tourism Development Corporation Vs. Intejam Alizafri), (2006) 5 SCC-127 (Nagar Mahapalika Vs. State of U.P.), (2006) 1 SCC-106 (R. M. Yellati vs. Asstt. Executive Engineer), (2006) 2 SCC-711 (State of M. P. Vs. Arjunlal Rajak), (2007) 13 SCC-343 (Ranip Nagar Palika vs. Babuji Gabhaji Thakore), (2007) 12-172 (State of Maharashtra vs. Dattatraya Digamber Birajdar), 2008 II CLR 1089 (State of Haryana vs. Ramesh Kumar), (2008) 3 SCC-474 (BSNL vs. Mahesh Chand), (2008) 5 SCC-171 (Municipal Corporation, Faridabad vs. Durga Prasad) and (2009) 17 SCC-326 (Ajnala Cooperative Sugar Mills Ltd. vs. Sukhraj Singh).

It is settled beyond doubt by the Hon'ble Apex Court in different judgments including the judgments cited by the learned advocate for the party No.1 that where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it is for the claimant to lead evidence to that effect and the workman's affidavit is not sufficient evidence for that purpose.

Keeping in view the principles as mentioned above, now, the present case at hand is to be considered.

12. To prove that he had worked for 240 days in the preceding 12 months of the date of termination, the

workman has given his own evidence on affidavit. Though, the workman has not produced any other evidence in support of his such claim, his evidence has been corroborated by the evidence of the witnesses no.1 and 2 of the party No. 1. As already mentioned above, Amitabh Datta, the witness No.1 for party No.1 has stated that the workman worked continuously from 1991 to 1993. Khandeswar Pralhad Gondane, witness No.2 for the party No.1 has stated that the workman worked for more than 240 days in every calendar year.

13. Apart from the oral evidence, the documentary evidence produced by the party No.1 clinches the issue in favour of the workman. The party No.1 has produced and proved the notice of retrenchment dated 09/12.02.1996 issued to the workman as Ext. M-II. In Ext. M-II, it has been mentioned that the workman joined in February, 1991 and worked from February, 1991 to November, 1993 and from August, 1994 to January, 1996 and he is entitled for retrenchment compensation for four and half years i.e. for 67 days at the rate of 15 days per year. So, it is clear from the materials on record that the workman infact had worked for more than 240 days in the preceding 12 calendar months of the date of his termination i.e. 12.02.1996. It is also found from the material on record that before the termination of the workman from services, the mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him. So, the termination of the workman from services amounts to retrenchment and such termination is illegal.

Applying the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocate for the workman to the case in hand, it is found that the issuance of the retrenchment notice as per Ext. M-II and sending of the demand draft towards retrenchment compensation and one month's wages on 09/10.02.1996 does not cure the illegality of termination of the services of the workman w.e.f. 12.02.1996.

14. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh) after taking into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal Council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (In charge Officer Vs. Shankar Setty.) have been pleased to hold that:-

"In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised

by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager in 1991, about 23 years back. It is also found that he continued as such till 22.11.1993, when he was terminated from services by party no.1. It is also found that production and marketing activities of the handmade paper unit, Wardha has been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 1,15,000 (Rupees one lakh fifteen thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Raju Sureshrao Rewatkar, is illegal and unjustified. The workman is entitled for monetary compensation of Rs.1,15,000 (Rupees one lakh fifteen thousand only) in lieu of reinstatement. He is not entitled for any other relief. The party no.1 is directed to pay the monetary compensation of Rs. 1,15,000 to the workman Shri Raju Sureshrao Rewatkar, within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 percent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1182.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर हैंडमेड पेपर प्रोडक्शन खादी और विलेज इंडस्ट्रीज कमीशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सी जी आई टी/

एनजीपी/177/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था।

[सं. एल-42012/122/96-आईआर (डीयू)
पी.के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March, 2014

S.O. 1182.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/177/2002) of the Cent. Govt. Indus. Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Director, Handmade Paper Production Khadi & Village Industrial Commission and their workmen, which was received by the Central Government on 24-03-2014.

[No. L-42012/122/96-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/177/2002 Date: 03.03.2014

Party No.1 : The Director,
Handmade Paper Production
Marketing and Training Centre,
Khadi & Village Industries
Commission,
Wardha-442001

Versus

Party No.2 : Shri Kishore Tanbaji Madone,
R/o J.B.C.R. Quarters, Ramnagar,
Wardha-442001

AWARD

(Dated: 3rd March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Handmade Paper Production and Training Centre and their workman, Shri Kishore Tanbaji Madone,

for adjudication, as per letter No.L-42012/122/96-IR(DU) dated 09.07.1997, with the following schedule:-

"Whether the action of the management of the Director, Khadi and Village Industrial Commission, Handmade Paper Production, Marketing and Training Centre, J.B. Central Research Institute, Manganwadi, Wardha in terminating the services of Shri Kishore Tanbaji Madone, an unskilled worker w.e.f. 12.02.1996 by way of retrenchment is legal, proper and just? If not, to what relief the worker is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Kishore Tanbaji Madone, ('the workman" in short), filed the statement of claim and the management of Handmade Paper Production and Training Centre, Wardha ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that Party No. 1 is a Central Government undertaking and is engaged in manufacturing and production of Handmade Papers and in the factory of Party No. 1 at Wardha, about 250 permanent employees were working and he was employed by Party No. 1 as an unskilled worker in February, 1991 and worked continuously and he was being paid @ Rs. 675 per month and though he himself and 17 other workers engaged by Party No. 1 worked with Party No. 1 for several years, they were continued as temporary workers.

The further case of the workman is that since the date of his appointment, he worked continuously without any gap and he had put in 240 days of attendance in every year of service, but he was not made permanent in service and even though, he was doing the same work as done by the permanent workers, neither he was paid wages at par with the permanent employees nor given the benefits of bonus, E.S.I. Schemes and Provident Fund Scheme etc. and as Party No. 1 did not issue the Attendance-cum-Wage Card to him and the other 17 temporary workers, on 18.11.1993, all of them issued a notice through an advocate to Party No. 1 to make them permanent and to give them all other benefits of permanent employees and soon after the receipt of the said notice, Party No. 1 did not allow him and other temporary workers to resume duty w.e.f. 20.11.1993 and he was informed by Party No. 1 through Shri A. Datta that he would be allowed to resume duty in case of his consenting to work under the Contractor, but he refused the offer, as because, he had already worked with Party No. 1 for years together and was entitled to be made permanent in service as per the representation dated 18.11.1993 and though he approached Party No. 1 on

21.11.1993 and 22.11.1993, he was not provided with work, so he alongwith the other 17 temporary workers on 22.11.1993 issued another notice, but inspite of the same, no work was provided to them, so they issued another notice through the advocate on 27.11.1993, but Party No. 1 neither replied to the notice nor provided him any work and thereafter also, he continuously approached and requested the Party No. 1 to provide him work, but Party No. 1 did not pay any heed to his request and after waiting for a long time, he approached the Labour Court, Nagpur by filing U.L.P.A. Complaint No. 765 of 1993 and the Labour Court vide its interim order, directed Party No. 1 to reinstate him in service, but no work was provided to him by Party No. 1 and Party No. 1 moved a revision application before the Industrial Court, Nagpur, against the order of the Labour Court raising objection of the Labour Court of having no jurisdiction to entertain and decide the matter pertaining to the establishment of the Central Government.

The further case of the workman is that out of the rest 17 retrenched workers, five workers approached the Asstt. Labour Commissioner (Central), Nagpur ("the ALC" in short) and the said five workers were provided with work by Party No. 1, so he withdrew the case filed by him in the Labour Court, Nagpur and approached the ALC by filing an application under Section 2-A of the Act and the five workers, who had been provided work by Party No. 1 after their approaching the ALC were juniors to him and the ALC issued notice to Party No. 1 and Party No. 1 did not agree for any amicable settlement, so there was failure of the conciliation proceedings and the ALC submitted the failure report to the Central Government.

It is also pleaded by the workman that Party No. 1 had issued experience certificate in his favour and before terminating his services, Party No. 1 neither issued one month's notice nor paid notice pay in lieu of the notice or retrenchment compensation as provided under Section 25-F of the Act and therefore, his removal/retrenchment from services is illegal, improper and contrary to law and he is entitled for reinstatement in services with full back wages alongwith all monetary benefits of permanent employee, from the date of joining the service of Party No. 1 till the date of actual reinstatement and work is still available with Party No. 1 and Party No. 1 engaged new persons on less wages for more production.

The further case of the workman is that he was reinstated in service by Party No. 1 in August, 1994 and he worked till January, 1996 and he was again retrenched from services vide notice dated 09.02.1996 and the retrenchment was itself illegal, as because, the Party No. 1 did not pay all the legal dues at the time of retrenchment compensation was not paid in accordance with law and his retrenchment was again challenged before the ALC (C), Nagpur and the

conciliation proceedings ended in failure, the reference had been made by the Central Govt. for adjudication.

3. The Party No. 1 in the written statement has pleaded inter-alia that it does not have any Managing Director, but only a Director of Handmade Paper Industry, which runs under Khadi and Village Industries Commission ("KVIC" in short) and KVIC is a statutory body, which was created by the statute, "Khadi & Village Industries Commission Act, 1956" and KVIC is functioning under the Ministry of Industry, Government of India and to achieve the object entrusted to KVIC, several Research and Training Centers were established including the J.B. Research Institute at Wardha, to provide artisan training courses for Handmade Paper Industries, but the unit so established at Wardha was handed over to a local institution, namely, "Khadi Gramodhyog Sangh, Manganwadi, Wardha, for the purpose of continuing the production activities and in 1984, the management of the said unit was taken over by it and it was decided to use the said unit as a demonstration-cum-extension Centre, for conducting experiments and testing etc. and arranging training of skilled workers and two technical persons were posted to look after the work and the unit finally started its Science & Technology (Research) work and for that some workers were engaged on daily wages, from November, 1984 and the work involved were of research and training and therefore not a continuous work and the workers were engaged as per requirements of work and after completion of the work, they were discontinued and none of the workers was engaged on continuous basis and the said unit functioned from 1984 to 1988 and when the unit was doing a prestigious research work of developing a process for making stiff, thick and hard water proof board by using completely waste banana stem, the workers stopped attending the work from 11.01.1988 and when enquiry was made for their non attendance, it was informed that they wanted regular work without break and unless and until their such demand would be fulfilled, they would not join the work.

It is further pleaded by Party No. 1 that six of the daily wages workers lodged complaint with the ALC and worker Shankar Rao Ingle approached the Labour Court, Nagpur and a written statement was filed by KVIC raising the question of jurisdiction and the said case continued till 1991 without adjudication and there was a joint discussion on 18.01.1991 between the six workers, who had made complaint to ALC and the incharge of the unit at Wardha and it was informed to the ALC that under Production Marketing and Training Programme of KVIC, the unit would start functioning from 01.02.1991, where all the six workers could be engaged on daily wages, as such, the ALC closed the case with the instruction to inform him about the appointment and appointment letters dated 28.01.1991 were issued to the said six workers including

Shankar Rao Ingle, directing them to join work and out of them, five workers joined their duties and the appointment of Shankar Rao Ingle was made with the condition of withdrawal of the case filed by him, but Shankar Rao Ingle neither withdrew the case nor joined work and one of the conditions of appointment of the rest five workers was that they would enter into an agreement with its management and the finalization of the agreement took a long time and on 19.11.1993, a meeting was held with all the workers and in the presence of the then Director, Regional Office, KVIC, Wardha, the workers were requested to enter into the agreement, which was at par with another unit of Handmade Paper at Pune and the workers requested for two to three days time to give their consent, however, on 22.11.1993, the workers sent a letter informing their unwillingness to work on contract basis and that they would work only on daily wages basis and it was surprised to note that when the workers were provided work on daily wages basis in 1988, they demanded continuous work and when they were offered continuous work under Production Marketing and Training Programme in 1991, they refused to enter into an agreement and to work on contract basis, refusing to adhere to the condition of appointment and the workers could not be continued due to their refusal to enter into the agreement and their discontinuance from work was on their own accord and workers had stalled the Research Programme in 1988 and the unit had to remain close till 1991.

Party No. 1 has further pleaded that five workers approached the ALC (Central), Nagpur vide their complaint dated 22.11.1993, complaining that they were illegally terminated and the conciliation proceedings ended in failure and on submission of the failure reports by the ALC (Central), Nagpur, the Central Government refused to refer the cases of the said five workers for adjudication, by order dated 20.01.1995.

The further case of the Party No. 1 is that in the meantime, in the complaints filed by the workers in the Labour Court, Nagpur interim order was passed on 31.05.1994 directing it to reinstate the complainants and it filed revision before the Industrial Court against the order dated 31.05.1994 and on 17.08.1994, by way of pursis, the workers gave the undertaking before the Industrial Court not to proceed with the complaint filed before the Labour Court and in view of the withdrawal of the complaint by the workers, it also withdrew the revision from the Industrial Court on 10.04.1995 and on the basis of the orders of the Ministry, the Directorate of Handmade Paper Industry, Central Office at Mumbai moved a note to the commission to close down the production and Marketing activities of the unit and subsequently, the commission in its 449 the meeting dated 20.12.1995 decided to close down the activities and retrench all daily wage workers and on the basis of the commission's decision, all workers were

served with the retrenchment notice alongwith the retrenchment compensation on 09.02.1996 and some workers, who had left the work as far back as 1993 were also given the retrenchment benefit.

The specific case of the Party No. 1 is that the workman was given appointment from February, 1991 on temporary basis for a fixed period till 31.12.1991 and he did not work continuously since the date of his appointment and he worked intermittently on daily wages, as and when work was available and as the workers denied to enter into an agreement, the production activities were stopped and presently, it is engaged only in providing Artisan training and in the year 1993, there were only two permanent Handmade Paper staff and four JBCRI staff and at present, there are only one Handmade Paper staff and three permanent JBCRI staff and the unit at Wardha had to be closed from 11.01.1988 to 1991, as the daily wage workers left the work and the unit again started functioning from 01.02.1991 and the workman approached it for appointment and on assurance of the workman to enter into an agreement, he was appointed from 23.09.1991, but in November, 1993, when the workman was asked to enter into an agreement, he refused as was done by other workers and due to the refusal of the workman for entering into the agreement, which was the condition of appointment in 1991, he could not be given work and the workman was not reinstated in service in August, 1994 and it is false to state that he worked till January, 1996 and the claim of the workman that he had put in continuous service of 240 days is false and as such, question of not allowing him to join work does not arise and the workman is not entitled to any relief.

4. In the rejoinder, the workman has denied the allegations made in the written statement and reiterated the facts mentioned in the statement of claim. It is further pleaded by the workman in the rejoinder that he was orally terminated w.e.f. 22.11.1993 and due to the intervention of the ALC, the workers were again allowed to resume their duties and thereafter, the workers demanded for their legitimate rights including payment of wages applicable to them and Party No. 1 with malafide intension decided to stop the work, instead of implementing the statutory law and he was provided with work from 1st, February, 1991 as per the order issued to the workers including himself individually and he worked continuously till 22.11.1993 and he was orally terminated from services w.e.f. 22.11.1993, without service of one month's notice or payment of one month's pay in lieu of notice or retrenchment compensation and his oral termination is illegal, improper and contrary to law.

5. It is to be mentioned here that this reference alongwith references No. 160 to 167, 169 to 176 and 178 of 2002 had been disposed of by this Tribunal by a common award dated 27.03.2007, directing the reinstatement of the

workman and other petitioners. Being aggrieved by the said award, the Party No. 1 approached the Hon'ble High Court, Nagpur Bench in Writ Petition No. 4503/2007 and the Hon'ble High Court by order dated 25.08.2008 have been pleased to pass the following orders:-

“In view of the above, the impugned award dated 27.03.2007 passed by the Industrial Tribunal –cum-Labour Court, Nagpur in case Nos. 160/2002 to 167/2002, 169/2002 to 173 and 175 to 178/2002 is quashed and set aside. The Tribunal is directed to allow the parties to lead further evidence, if they so desire and decided the cases thereafter. The Tribunal is directed to decide the reference in case Nos. 174/2002 to 178/2002 by common or separate awards as he deems fit and proper on the basis of the evidence led by the parties.”

According to the direction of the Hon'ble High Court, the parties were given the chance of leading further evidence.

The workman, who had examined himself as a witness in support of his case did not adduce further evidence.

However, the Party No. 1 examined two witnesses, namely, Khandeswar Pralhad Gondane and Milind Wakode and produced documentary evidence in support of its case, besides the evidence already adduced.

6. The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim and rejoinder. The workman in his cross-examination has stated that he worked continuously from 1985 to November, 1993. He has denied the suggestion that he did not work for 240 days in any calendar year. The workman in his cross-examination has further stated that on 09.02.1996, one registered letter, M-2 was sent to him, but he returned the same. The workman has admitted that the factory was closed from 1988 to 1991 and he did not work from January, 1988.

7. The first witness for Party No. 1 is Amitabh Datta, an Asstt. Director of Party No. 1. The evidence of witness, Amitabh is on affidavit. In his examination in chief on affidavit, in paragraph 8, this witness has stated that, “the party No.2 was given appointment vide letter 23.09.1991 on temporary basis. The appointment was for a fixed period until 31.12.1991, that party No.2 however did not join the work.” In paragraph 11 of his affidavit this witness has stated that, “However the unit was again started from 01.02.1991 and the Party No. 2 were served appointment letter dated 28.01.1991 to join, with conditions that they have to enter into an agreement. That when in 1993 the workers including Party No. 2 was asked to sign the agreement. Instead of signing the agreement the workers including Party No. 2 sent letter dated 22.11.1993

informing that they are not ready to work on contract basis and will work on daily wages. That in absence of entering into the agreement which was the condition of appointment the workers could not be given work and they did not work after 22.11.1993. It is denied that party No.2 was reinstated in service from August, 94 to Jan., 1998. It is denied that the retrenchment dated 9.2.1996 was illegal, on the contrary though the Party No. 2 had not worked after 22.11.1993, nor was entitled to, he was given the benefits alongwith other workers. The retrenchment notice alongwith the compensation was sent to all the workers including the Party No. 2.”

In his cross-examination, this witness has stated that he was posted at Wardha from 1984 to 1995 and he knows the workman and the workman was working from 1985 at Wardha. In his cross-examination, this witness has categorically admitted that the workman had worked continuously from 1991 to 1993.

8. The witness No.2 examined by Party No. 1 is Khandeswar Pralhad Gondane. The examination-in-chief on affidavit of this witness is in the line of the stands taken by the Party No. 1 in the written statement. In paragraph 3 of his affidavit, this witness has stated that, “Party No. 2 as well as other employees were never in continuous employment with Party No. 1. They had not completed 240 days with Party No.1. Despite this, they were offered with closure compensation alongwith all other legal dues.” Demolishing his own evidence given in the examination-in-chief, in his cross-examination, this witness has stated that he is working with Handmade Paper from 17.07.1992 and the workman was working with Handmade Paper prior to his joining in service and he was also working even after his joining service in 1992. This witness has categorically admitted that the workman worked for more than 240 days in every calendar year.

9. The third witness for Party No. 1 is Milind Wakode, the Divisional Director, Nagpur. In his examination-in-chief on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. This witness has further stated that the Handmade Paper Unit at Wardha had been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995 and retrenchment notice alongwith compensation was sent to all the workers by letter dated 09/10.02.1996. This witness has also proved the office copy of the termination order as Ext. M-II.

In his cross-examination, this witness has stated that Ext. M-II is dated 09.02.1996 and he cannot say the exact date of termination of the workman and Ext. M-III is the office copy of the order dated 31.01.1991 and Ext.M-III was issued after the engagement of the workman by the management and as per condition No.7 of Ext. M-III, the workman was to execute an agreement as prescribed by

the office of Handmade Paper, Khadi Board, Pune and as the workman did not agree to execute any agreement, he was not provided with work or made permanent and the workman was engaged as labourer on daily wages and he does not have any idea as to how the retrenchment compensation paid to the workman was calculated and as per Ext. M-II, retrenchment compensation was paid to the workman for 3 years i.e. for 45 days.

10. At the time of argument, it was submitted by the learned advocate for the workman that the workman was working with the Party No. 1 as an unskilled worker from February, 1991 and from the date of his initial appointment, the workman worked continuously and he had completed more than 240 days of work in each calendar year and from the date of completion of 240 days of work, the workman was entitled for regularization in service, but his services were not regularized and the workman was compelled to sign an illegal agreement and when he did not agree to sign the same, he was not allowed to join service from 22.11.1993 and the workman was again reinstated in service in August, 1994 and he worked till January, 1996 and again he was terminated from services and such terminations of the workman was without compliance of the mandatory provisions of Section 25-F of the Act and the termination amounts to retrenchment and the termination of the workman is illegal, arbitrary, malafide and contrary to the principles of natural justice and payment of retrenchment compensation in 1996 cannot cure such illegality and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1964 II LLJ-271 (Ambalal Shivlal Vs. Vin (D.M.) and others), 1969 II LLJ-373 (Sivanandam Vs. Press Superintendent, S. Railway, Madras), 1979 ILLJ-168 (B.M. Gupta Vs. State of West Bengal), 1960 I LLJ – 251 (S.C.) (State of Bombay Vs. Hospital Mazdoor Sabha) and 1964 I LLJ – 333 (S.C.) (Workmen of Subong Tea Estate Vs. Subong Tea Estate).

11. On the other hand, it was submitted by the learned advocate for the Party No. 1 that the workman was given appointment on temporary basis for a fixed period i.e. till 31.12.1991 and he did not work continuously since the date of his appointment and he worked intermittently on daily wages as and when work was available and he did not complete 240 days of work in the preceding 12 calendar months of the alleged date of termination and the workman has not adduced any legal evidence on record to show that he had worked for 240 days in the preceding 12 months of the date of termination and the onus to prove such fact is on the workman, but he failed to discharge the onus by adducing necessary evidence and as such, he is

not entitled for the benefits of the provisions of Section 25-F of the Act and as per the decision of the commissioner, the production activities of the unit was closed down and even though, the workman did not work after 1988, notice pay and retrenchment compensation was sent to him alongwith the retrenchment notice dated 09.02.1996 and Party No. 1 did not commit any illegality and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the Party No. 1 placed reliance on the decisions reported in the decisions reported in (2002) 3 SCC-25 (Range Forest Officer Vs. S.T. Hadimani), (2004) 8 SCC-195 (Municipal Corporation, Faridabad Vs. Siri Niwas), (2005) 8 SCC-481 (Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh), (2005) 8 SCC-750 (Surendra Nagar District Panchayat Vs. Dahyabhai Amarsingh), (2006) 2 SCC-716 (M.P. State Agro Industries Development Corp. Ltd. Vs. S.C. Pandey), (2006) 5 SCC-173 (Municipal Council, Sujanpur vs. Surinder Singh), (2006) 9 SCC-697 (Krishna Bhagyajal Nigam Ltd. Vs. Mohd. Rafi), (2006) 9 SCC-132 (Surendranagar Distt. Panchayat vs. Ganga Ben Laljibhai), (2006) 9 SCC-124 (Chief Engineer Ranjit Sagar Dam vs. Sham Lal), (2006) 6 SCC-275 (Rajasthan Tourism Development Corporation vs. Intejam Alizafri), (2006) 5 SCC-127 (Nagar Mahapalika vs. State of U.P.), (2006) 1 SCC-106 (R.M. Yellati vs. Asstt. Executive Engineer), (2006) 2 SCC-711 (State of M.P. vs. Arjunlal Rajak), (2007) 13 SCC-343 (Ranip Nagar Palika vs. Babuji Gabhaji Thakore), (2007) 12-172 (State of Maharashtra vs. Dattatraya Digamber Birajdar), 2008 II CLR 1089 (State of Haryana vs. Ramesh Kumar), 92008) 3 SCC-474 (BSNL vs. Mahesh Chand), (2008) 5 SCC-171 (Municipal Corporation, Faridabad vs. Durga Prasad) and (2009) 17 SCC-326 (Ajnala Cooperative Sugar Mills Ltd. vs. Sukhraj Singh).

It is settled beyond doubt by the Hon'ble Apex Court in different judgments including the judgments cited by the learned advocate for the Party No. 1 that where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it is for the claimant to lead evidence to that effect and the workman's affidavit is not sufficient evidence for that purpose.

Keeping in view the principles as mentioned above, now, the present case at hand is to be considered.

12. To prove that he had worked for 240 days in the preceding 12 months of the date of termination, the workman has given his own evidence on affidavit. Though, the workman has not produced any other evidence in support of his such claim, his evidence has been corroborated by the evidence of the witnesses No. 1 and 2 of the party No. 1. As already mentioned above, Amitabh Datta, the witness No. 1 for party No. 1 has stated that the workman worked continuously from 1991 to 1993.

Khandeswar Pralhad Gondane, witness No.2 for the party No.1 has stated that the workman worked for more than 240 days in every calendar year.

13. Apart from the oral evidence, the documentary evidence produced by the Party No.1 clinches the issue in favour of the workman. The party No.1 has produced and proved the notice of retrenchment dated 09/12.02.1996 issued to the workman as Ext. M-II. In Ext. M-II, it has been mentioned that the workman joined in February, 1991 and worked from February, 1991 to November, 1993 and from August, 1994 to January, 1996 and he is entitled for retrenchment compensation for four and half years i.e. for 67 days at the rate of 15 days per year. So, it is clear from the materials on record that the workman infact had worked for more than 240 days in the preceding 12 calendar months of the date of his termination i.e. 12.02.1996. It is also found from the material on record that before the termination of the workman from services, the mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him. So, the termination of the workman from services amounts to retrenchment and such termination is illegal.

Applying the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocate for the workman to the case in hand, it is found that the issuance of the retrenchment notice as per Ext. M-II and sending of the demand draft towards retrenchment compensation and one month's wages on 09/10.02.1996 does not cure the illegality of termination of the services of the workman w.e.f. 12.02.1996.

14. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh) after taking into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal Council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (In charge Officer Vs. Shankar Setty.) have been pleased to hold that:-

“In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short

period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager in 1991, about 23 years back. It is also found that he continued as such till 22.11.1993, when he was terminated from services by Party No.1. It is also found that production and marketing activities of the handmade paper unit, Wardha has been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 1,15,000 (Rupees one lakh fifteen thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered :—

ORDER

The action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Kishore Tanbaji Madone, is illegal and unjustified. The workman is entitled for monetary compensation of Rs. 1,15,000 (Rupees one lakh fifteen thousand only) in lieu of reinstatement. He is not entitled for any other relief. The party No.1 is directed to pay the monetary compensation of Rs. 1,15,000 to the workman Shri Kishore Tanbaji Madone, within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 per cent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1183.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर हैंडमेड पेपर प्रोडक्शन खादी और विलेज इंडस्ट्रीज कमीशन के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सी जी आई टी/

एनजीपी/176/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था।

[सं. एल-42012/121/96-आईआर (डीयू)
पी.के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March, 2014

S.O. 1183.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/176/2002) of the Cent. Govt. Indus. Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the industrial dispute between employer in relation to the management of Director, Handmade Paper Production Khadi & Village Industrial Commission and their workmen, which was received by the Central Government on 24-03-2014.

[No. L-42012/121/96-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

**BEFORE SHRI J. P. CHAND, PRESIDING
OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/176/2002 Date: 03.03.2014.

Party No.1 : The Director,
Handmade Paper Production
Marketing and Training Centre,
Khadi & Village Industries
Commission,
Wardha-442001.

Versus

Party No. 2: Shri Suresh Bhauraoji Vasake,
R/o Manganwadi Quarters,
Wardha – 442001.

AWARD

(Dated: 3rd March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) (“the Act” in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Handmade Paper Production and Training Centre and their workman, Shri Suresh Bhauraoji Vasake for adjudication, as per letter No.L-42012/121/96-IR(DU) dated 09.07.1997, with the following schedule:-

“Whether the action of the management of the Director, Khadi and Village Industrial Commission, Handmade Paper Production, Marketing and Training Centre, J.B. Central Research Institute, Manganwadi, Wardha in terminating the services of Shri Suresh Bhauraoji Vasake, an unskilled worker w.e.f. 12.02.1996 by way of retrenchment is legal, proper and just? If not, to what relief the worker is entitled to?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Suresh Bhauraoji Vasake, (“the workman” in short), filed the statement of claim and the management of Handmade Paper Production and Training Centre, Wardha (“Party No. 1” in short) filed their written statement.

The case of the workman as presented in the statement of claim is that Party No. 1 is a Central Government undertaking and is engaged in manufacturing and production of Handmade Papers and in the factory of Party No. 1 at Wardha, about 250 permanent employees were working and he was employed by Party No. 1 as an unskilled worker on 23.09.1991 and worked continuously and he was being paid @ Rs. 675 per month and though he himself and 17 other workers engaged by Party No. 1 worked with Party No. 1 for several years, they were continued as temporary workers.

The further case of the workman is that since the date of his appointment, he worked continuously without any gap and he had put in 240 days of attendance in every year of service, but he was not made permanent in service and even though, he was doing the same work as done by the permanent workers, neither he was paid wages at par with the permanent employees nor given the benefits of bonus, E.S.I. Schemes and Provident Fund Scheme etc. and as Party No. 1 did not issue the attendance-cum-Wage Card to him and the other 17 temporary workers, on 18.11.1993, all of them issued a notice through an advocate to Party No. 1 to make them permanent and to give them all other benefits of permanent employees and soon after the receipt of the said notice, Party No. 1 did not allow him and other temporary workers to resume duty w.e.f. 20.11.1993 and he was informed by Party No. 1 through Shri A. Datta that he would be allowed to resume duty in case of his consenting to work under the Contractor, but he refused the offer, as because, he had already worked with Party No. 1 for years together and was entitled to be made permanent in service as per the representation dated 18.11.1993 and though he approached Party No. 1 on 21.11.1993 and 22.11.1993, he was not provided with work, so he alongwith the other 17 temporary workers on

22.11.1993 issued another notice, but inspite of the same, no work was provided to them, so they issued another notice through the advocate on 27.11.1993, but Party No. 1 neither replied to the notice nor provided him any work and thereafter also, he continuously approached and requested the Party No. 1 to provide him work, but Party No. 1 did not pay any heed to his request and after waiting for a long time, he approached the Labour Court, Nagpur by filing U.L.P.A. Complaint No. 765 of 1993 and the Labour Court vide its interim order, directed Party No. 1 to reinstate him in service, but no work was provided to him by Party No. 1 and Party No. 1 moved a revision application before the Industrial Court, Nagpur, against the order of the Labour Court raising objection of the Labour Court of having no jurisdiction to entertain and decide the matter pertaining to the establishment of the Central Government.

The further case of the workman is that out of the rest 17 retrenched workers, five workers approached the Asstt. Labour Commissioner (Central), Nagpur ("the ALC" in short) and the said five workers were provided with work by Party No. 1, so he withdrew the case filed by him in the Labour Court, Nagpur and approached the ALC by filing an application under Section 2-A of the Act and the five workers, who had been provided work by Party No. 1 after their approaching the ALC were juniors to him and the ALC issued notice to Party No. 1 and Party No. 1 did not agree for any amicable settlement, so there was failure of the conciliation proceedings and the ALC submitted the failure report to the Central Government.

It is also pleaded by the workman that Party No. 1 had issued experience certificate in his favour and before terminating his services, Party No. 1 neither issued one month's notice nor paid notice pay in lieu of the notice or retrenchment compensation as provided under Section 25-F of the Act and therefore, his removal/retrenchment from services is illegal, improper and contrary to law and he is entitled for reinstatement in services with full back wages alongwith all monetary benefits of permanent employee, from the date of joining the service of Party No. 1 till the date of actual reinstatement and work is still available with Party No. 1 and Party No. 1 engaged new persons on less wages for more production.

The further case of the workman is that he was reinstated in service by Party No. 1 in August, 1994 and he worked till January, 1996 and he was again retrenched from services vide notice dated 09.02.1996 and the retrenchment was itself illegal, as because, the Party No. 1 did not pay all the legal dues at the time of retrenchment compensation was not paid in accordance

with law and his retrenchment was again challenged before the ALC (C), Nagpur and the conciliation proceedings ended in failure, the reference had been made by the Central Govt. for adjudication.

3. The Party No. 1 in the written statement has pleaded inter-alia that it does not have any Managing Director, but only a Director of Handmade Paper Industry, which runs under Khadi and Village Industries Commission ("KVIC" in short) and KVIC is a statutory body, which was created by the statute, "Khadi & Village Industries Commission Act, 1956" and KVIC is functioning under the Ministry of Industry, Government of India and to achieve the object entrusted to KVIC, several Research and Training Centers were established including the J.B. Research Institute at Wardha, to provide artisan training courses for Handmade Paper Industries, but the unit so established at Wardha was handed over to a local institution, namely, "Khadi Gramodhyog Sangh, Manganwadi, Wardha, for the purpose of continuing the production activities and in 1984, the management of the said unit was taken over by it and it was decided to use the said unit as a demonstration-cum-extension Centre, for conducting experiments and testing etc. and arranging training of skilled workers and two technical persons were posted to look after the work and the unit finally started its Science & Technology (Research) work and for that some workers were engaged on daily wages, from November, 1984 and the work involved were of research and training and therefore not a continuous work and the workers were engaged as per requirements of work and after completion of the work, they were discontinued and none of the workers was engaged on continuous basis and the said unit functioned from 1984 to 1988 and when the unit was doing a prestigious research work of developing a process for making stiff, thick and hard water proof board by using completely waste banana stem, the workers stopped attending the work from 11.01.1988 and when enquiry was made for their non attendance, it was informed that they wanted regular work without break and unless and until their such demand would be fulfilled, they would not join the work.

It is further pleaded by Party No. 1 that six of the daily wages workers lodged complaint with the ALC and worker Shankar Rao Ingle approached the Labour Court, Nagpur and a written statement was filed by KVIC raising the question of jurisdiction and the said case continued till 1991 without adjudication and there was a joint discussion on 18.01.1991 between the six workers, who had made complaint to ALC and the in charge of the unit at Wardha and it was informed to the ALC that under Production Marketing and Training Programme of KVIC,

the unit would start functioning from 01.02.1991, where all the six workers could be engaged on daily wages, as such, the ALC closed the case with the instruction to inform him about the appointment and appointment letters dated 28.01.1991 were issued to the said six workers including Shankar Rao Ingle, directing them to join work and out of them, five workers joined their duties and the appointment of Shankar Rao Ingle was made with the condition of withdrawal of the case filed by him, but Shankar Rao Ingle neither withdrew the case nor joined work and one of the conditions of appointment of the rest five workers was that they would enter into an agreement with its management and the finalization of the agreement took a long time and on 19.11.1993, a meeting was held with all the workers and in the presence of the then Director, Regional Office, KVIC, Wardha, the workers were requested to enter into the agreement, which was at par with another unit of Handmade Paper at Pune and the workers requested for two to three days time to give their consent, however, on 22.11.1993, the workers sent a letter informing their unwillingness to work on contract basis and that they would work only on daily wages basis and it was surprised to note that when the workers were provided work on daily wages basis in 1988, they demanded continuous work and when they were offered continuous work under Production Marketing and Training Programme in 1991, they refused to enter into an agreement and to work on contract basis, refusing to adhere to the condition of appointment and the workers could not be continued due to their refusal to enter into the agreement and their discontinuance from work was on their own accord and workers had stalled the Research Programme in 1988 and the unit had to remain close till 1991.

Party No. 1 has further pleaded that five workers approached the ALC (Central), Nagpur vide their complaint dated 22.11.1993, complaining that they were illegally terminated and the conciliation proceedings ended in failure and on submission of the failure reports by the ALC (Central), Nagpur, the Central Government refused to refer the cases of the said five workers for adjudication, by order dated 20.01.1995.

The further case of the Party No. 1 is that in the meantime, in the complaints filed by the workers in the Labour Court, Nagpur interim order was passed on 31.05.1994 directing it to reinstate the complainants and it filed revision before the Industrial Court against the order dated 31.05.1994 and on 17.08.1994, by way of pursis, the workers gave the undertaking before the Industrial Court not to proceed with the complaint filed before the Labour Court and in view of the withdrawal of the

complaint by the workers, it also withdrew the revision from the Industrial Court on 10.04.1995 and on the basis of the orders of the Ministry, the Directorate of Handmade Paper Industry, Central Office at Mumbai moved a note to the commission to close down the production and Marketing activities of the unit and subsequently, the commission in its 449th meeting dated 20.12.1995 decided to close down the activities and retrench all daily wage workers and on the basis of the commission's decision, all workers were served with the retrenchment notice alongwith the retrenchment compensation on 09.02.1996 and some workers, who had left the work as far back as 1993 were also given the retrenchment benefit.

The specific case of the Party No. 1 is that the workman was given appointment from 23.09.1991 on temporary basis for a fixed period till 31.12.1991 and he did not work continuously since the date of his appointment and he worked intermittently on daily wages, as and when work was available and as the workers denied to enter into an agreement, the production activities were stopped and presently, it is engaged only in providing Artisan training and in the year 1993, there were only two permanent Handmade Paper staff and four JBCRI staff and at present, there are only one Handmade Paper staff and three permanent JBCRI staff and the unit at Wardha had to be closed from 11.01.1988 to 1991, as the daily wage workers left the work and the unit again started functioning from 01.02.1991 and the workman approached it for appointment and on assurance of the workman to enter into an agreement, he was appointed from 23.09.1991, but in November, 1993, when the workman was asked to enter into an agreement, he refused as was done by other workers and due to the refusal of the workman for entering into the agreement, which was the condition of appointment in 1991, he could not be given work and the workman was not reinstated in service in August, 1994 and it is false to state that he worked till January, 1996 and the claim of the workman that he had put in continuous service of 240 days is false and as such, question of not allowing him to join work does not arise and the workman is not entitled to any relief.

4. In the rejoinder, the workman has denied the allegations made in the written statement and reiterated the facts mentioned in the statement of claim. It is further pleaded by the workman in the rejoinder that he was orally terminated w.e.f. 22.11.1993 and due to the intervention of the ALC, the workers were again allowed to resume their duties and thereafter, the workers demanded for their legitimate rights including payment of wages applicable to them and Party No. 1 with malafide intension decided to stop the work, instead of implementing the statutory

law and he was provided with work from 1st February, 1991 as per the order issued to the workers including himself individually and he worked continuously till 22.11.1993 and he was orally terminated from services w.e.f. 22.11.1993, without service of one month's notice or payment of one month's pay in lieu of notice or retrenchment compensation and his oral termination is illegal, improper and contrary to law.

5. It is to be mentioned here that this reference alongwith references No. 160 to 167 and 169 to 175 and 177 to 178 of 2002 had been disposed of by this Tribunal by a common award dated 27.03.2007, directing the reinstatement of the workman and other petitioners. Being aggrieved by the said award, the Party No. 1 approached the Hon'ble High Court, Nagpur Bench in Writ Petition No. 4503/2007 and the Hon'ble High Court by order dated 25.08.2008 have been pleased to pass the following orders:-

“In view of the above, the impugned award dated 27.03.2007 passed by the Industrial Tribunal –cum-Labour Court, Nagpur in case Nos. 160/2002 to 167/2002, 169/2002 to 173 and 175 to 178/2002 is quashed and set aside. The Tribunal is directed to allow the parties to lead further evidence, if they so desire and decided the cases thereafter. The Tribunal is directed to decide the reference in case Nos. 174/2002 to 178/2002 by common or separate awards as he deems fit and proper on the basis of the evidence led by the parties.”

According to the direction of the Hon'ble High Court, the parties were given the chance of leading further evidence.

The workman, who had examined himself as a witness in support of his case did not adduce further evidence.

However, the Party No. 1 examined two witnesses, namely, Khandeswar Pralhad Gondane and Milind Wakode and produced documentary evidence in support of its case, besides the evidence already adduced.

6. The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim and rejoinder. The workman in his cross-examination has stated that he worked continuously from 1985 to November, 1993. He has denied the suggestion that he did not work for 240 days in any calendar year. The workman in his cross-examination has further stated that on 09.02.1996, one registered letter, M-2 was sent to him, but he returned the same. The workman has admitted that the factory was closed from 1988 to 1991 and he did not work from January, 1988.

7. The first witness for Party No. 1 is Amitabh Datta, an Asstt. Director of Party No. 1. The evidence of witness,

Amitabh is on affidavit. In his examination in chief on affidavit, in paragraph 8, this witness has stated that, “the party No.2 was given appointment vide letter 23.09.1991 on temporary basis. The appointment was for a fixed period until 31.12.1991, that party No.2 however did not join the work.” In paragraph 11 of his affidavit this witness has stated that, “However the unit was again started from 01.02.1991 and the Party No. 2 were served appointment letter dated 28.01.1991 to join, with conditions that they have to enter into an agreement. That when in 1993 the workers including Party No. 2 was asked to sign the agreement. Instead of signing the agreement the workers including Party No. 2 sent letter dated 22.11.1993 informing that they are not ready to work on contract basis and will work on daily wages. That in absence of entering into the agreement which was the condition of appointment the workers could not be given work and they did not work after 22.11.1993. It is denied that party No.2 was reinstated in service from August,94 to Jan. 1998. It is denied that the retrenchment dated 9.2.1996 was illegal, on the contrary though the Party No. 2 had not worked after 22.11.1993, nor was entitled to, he was given the benefits alongwith other workers. The retrenchment notice alongwith the compensation was sent to all the workers including the Party No. 2.”

In his cross-examination, this witness has stated that he was posted at Wardha from 1984 to 1995 and he knows the workman and the workman was working from 1985 at Wardha. In his cross-examination, this witness has categorically admitted that the workman had worked continuously from 1991 to 1993.

8. The witness no.2 examined by Party No. 1 is Khandeswar Pralhad Gondane. The examination-in-chief on affidavit of this witness is in the line of the stands taken by the Party No. 1 in the written statement. In paragraph 3 of his affidavit, this witness has stated that, “party no. 2 as well as other employees were never in continuous employment with Party No. 1. They had not completed 240 days with Party No.1. Despite this, they were offered with closure compensation alongwith all other legal dues.” Demolishing his own evidence given in the examination-in-chief, in his cross-examination, this witness has stated that he is working with Handmade Paper from 17.07.1992 and the workman was working with Handmade Paper prior to his joining in service and he was also working even after his joining service in 1992. This witness has categorically admitted that the workman worked for more than 240 days in every calendar year.

9. The third witness for Party No. 1 is Milind Wakode, the Divisional Director, Nagpur. In his examination-in-chief on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. This witness has further stated that the Handmade Paper Unit at Wardha had been completely

closed as per the decision of the commission in its 449th meeting held on 25.12.1995 and retrenchment notice alongwith compensation was sent to all the workers by letter dated 09/10.02.1996. This witness has also proved the office copy of the termination order as Ext. M-II.

In his cross-examination, this witness has stated that Ext. M-II is dated 09.02.1996 and he cannot say the exact date of termination of the workman and Ext. M-III is the office copy of the order dated 31.01.1991 and Ext.M-III was issued after the engagement of the workman by the management and as per condition No.7 of Ext. M-III, the workman was to execute an agreement as prescribed by the office of Handmade Paper, Khadi Board, Pune and as the workman did not agree to execute any agreement, he was not provided with work or made permanent and the workman was engaged as labourer on daily wages and he does not have any idea as to how the retrenchment compensation paid to the workman was calculated and as per Ext. M-II, retrenchment compensation was paid to the workman for 3 years i.e. for 45 days.

10. At the time of argument, it was submitted by the learned advocate for the workman that the workman was working with the Party No. 1 as a helper w.e.f. 23.09.1991 and from the date of his initial appointment, the workman worked continuously and he had completed more than 240 days of work in each calendar year and from the date of completion of 240 days of work, the workman was entitled for regularization in service, but his services were not regularized and the workman was compelled to sign an illegal agreement and when he did not agree to sign the same, he was not allowed to join service from 22.11.1993 and the workman was again reinstated in service in August, 1994 and he worked till January, 1996 and again he was terminated from services and such terminations of the workman was without compliance of the mandatory provisions of Section 25-F of the Act and the termination amounts to retrenchment and the termination of the workman is illegal, arbitrary, malafide and contrary to the principles of natural justice and payment of retrenchment compensation in 1996 cannot cure such illegality and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1964 II LLJ-271 (Ambalal Shivlal Vs Vin (D.M.) and others), 1969 II LLJ-373 (Sivanandam Vs Press Superintendent, S. Railway, Madras), 1979 I LLJ-168 (B.M. Gupta Vs State of West Bengal), 1960 I LLJ – 251 (S.C.) (State of Bombay Vs Hospital Mazdoor Sabha) and 1964 I LLJ – 333 (S.C.) (Workmen of Subong Tea Estate Vs Subong Tea Estate).

11. On the other hand, it was submitted by the learned advocate for the Party No. 1 that the workman

was given appointment on temporary basis for a fixed period i.e. till 31.12.1991 and he did not work continuously since the date of his appointment and he worked intermittently on daily wages as and when work was available and he did not complete 240 days of work in the preceding 12 calendar months of the alleged date of termination and the workman has not adduced any legal evidence on record to show that he had worked for 240 days in the preceding 12 months of the date of termination and the onus to prove such fact is on the workman, but he failed to discharge the onus by adducing necessary evidence and as such, he is not entitled for the benefits of the provisions of Section 25-F of the Act and as per the decision of the commissioner, the production activities of the unit was closed down and even though, the workman did not work after 1988, notice pay and retrenchment compensation was sent to him alongwith the retrenchment notice dated 09.02.1996 and Party No. 1 did not commit any illegality and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the Party No. 1 placed reliance on the decisions reported in the decisions reported in (2002) 3 SCC-25 (Range Forest Officer Vs. S.T. Hadimani), (2004) 8 SCC-195 (Municipal Corporation, Faridabad Vs. Siri Niwas), (2005) 8 SCC-481 (Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh), (2005) 8 SCC-750 (Surendra Nagar District Panchayat vs. Dahyabhai Amarsingh), (2006) 2 SCC-716 (M.P. State Agro Industries Development Corp. Ltd. vs. S.C. pandey), (2006) 5 SCC-173 (Municipal Council, Sujanpur vs. Surinder Singh), (2006) 9 SCC-697 (Krishna Bhagyajal Nigam Ltd. vs. Mohd. Rafi), (2006) 9 SCC-132 (Surendranagar Distt. Panchayat vs. Ganga Ben Laljibhai), (2006) 9 SCC-124 (Chief Engineer Ranjit Sagar Dam vs. Sham Lal), (2006) 6 SCC-275 (Rajasthan Tourism Development Corporation vs. Intejam Alizafri), (2006) 5 SCC-127 (Nagar Mahapalika vs. State of U.P.), (2006) 1 SCC-106 (R.M. Yellati vs. Asstt. Executive Engineer), (2006) 2 SCC-711 (State of M.P. vs. Arjunlal Rajak), (2007) 13 SCC-343 (Ranip Nagar Palika vs. Babuji Gabhaji Thakore), (2007) 12-172 (State of Maharashtra vs. Dattatraya Digamber Birajdar), 2008 II CLR 1089 (State of Haryana vs. Ramesh Kumar), 92008) 3 SCC-474 (BSNL vs. Mahesh Chand), (2008) 5 SCC-171 (Municipal Corporation, Faridabad vs. Durga Prasad) and (2009) 17 SCC-326 (Ajnala Cooperative Sugar Mills Ltd. vs. Sukhraj Singh).

It is settled beyond doubt by the Hon'ble Apex Court in different judgments including the judgments cited by the learned advocate for the party No.1 that where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it is for the claimant to lead evidence to that effect and the workman's affidavit is not sufficient evidence for that purpose.

Keeping in view the principles as mentioned above, now, the present case at hand is to be considered.

12. To prove that he had worked for 240 days in the preceding 12 months of the date of termination, the workman has given his own evidence on affidavit. Though, the workman has not produced any other evidence in support of his such claim, his evidence has been corroborated by the evidence of the witnesses No.1 and 2 of the party No.1. As already mentioned above, Amitabh Datta, the witness No.1 for party No.1 has stated that the workman worked continuously from 1991 to 1993. Khandeswar Pralhad Gondane, witness No.2 for the party No.1 has stated that the workman worked for more than 240 days in every calendar year.

13. Apart from the oral evidence, the documentary evidence produced by the party No.1 clinches the issue in favour of the workman. The party No.1 has produced and proved the notice of retrenchment dated 09/12.02.1996 issued to the workman as Ext. M-II. In Ext. M-II, it has been mentioned that the workman joined in February, 1991 and worked from February, 1991 to November, 1993 and from August, 1994 to January, 1996 and he is entitled for retrenchment compensation for three and half years i.e. for 52 days at the rate of 15 days per year. So, it is clear from the materials on record that the workman infact had worked for more than 240 days in the preceding 12 calendar months of the date of his termination i.e. 12.02.1996. It is also found from the material on record that before the termination of the workman from services, the mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him. So, the termination of the workman from services amounts to retrenchment and such termination is illegal.

Applying the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocate for the workman to the case in hand, it is found that the issuance of the retrenchment notice as per Ext. M-II and sending of the demand draft towards retrenchment compensation and one month's wages on 09/10.02.1996 does not cure the illegality of termination of the services of the workman w.e.f. 12.02.1996.

14. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh) after taking into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs.

Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (In-charge Officer Vs. Shankar Setty.) have been pleased to hold that:-

"In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager in 1991, about 23 years back. It is also found that he continued as such till 22.11.1993, when he was terminated from services by party No.1. It is also found that production and marketing activities of the handmade paper unit, Wardha has been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 90,000/- (Rupees ninety thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Suresh Bhauraaji Vasake is illegal and unjustified. The workman is entitled for monetary compensation of Rs.90,000/- (Rupees ninety thousand only) in lieu of reinstatement. He is not entitled for any other relief. The party No.1 is directed to pay the monetary compensation of Rs. 90,000/- to the workman Shri Suresh Bhauraaji Vasake within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 percent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1184.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर हैंडमेड पेपर प्रोडक्शन खादी और विलेज इंडस्ट्रीज कमीशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/175/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हआ था ।

[सं. एल-42012/119/96-आईआर(डीयू)]
पी. के. वेणगोपाल, अनभाग अधिकारी

New Delhi, the 24th March, 2014

S.O. 1184.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/NGP/175/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Director, Handmade Paper Production Khadi & Village Industrial Commission and their workmen, which was received by the Central Government on 24-03-2014.

[No. L-42012/119/96-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,

CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/175/2002 Date: 03-03-2014.

Party No. 1 : The Director,
Handmade Paper Production
Marketing and Training Centre,
Khadi & Village Industries
Commission,
Wardha-442001.

Versus

Party No. 2 : Shri Vijay G Kanode,
R/o Near Ramnagar Water Tank J
Wardha – 442001.

AWARD

(Dated: 3rd March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial

dispute between the employers, in relation to the management of Handmade Paper Production and Training Centre and their workman, Shri Vijay G. Kanode for adjudication, as per letter No. L-42012/119/96-IR(DU) dated 10-07-1997, with the following schedule:-

“Whether the action of the management of the Director, Khadi and Village Industrial Commission, Handmade Paper Production, Marketing and Training Centre, J. B. Central Research Institute, Manganwadi, Wardha in terminating the services of Shri Shri Vijay G. Kanode, an unskilled worker w.e.f. 12-02-1996 by way of retrenchment is legal, proper and just ? If not, to what relief the worker is entitled to ?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, **Shri Vijay G. Kanode**, ("the workman" in short), filed the statement of claim and the management of Handmade Paper Production and Training Centre, Wardha ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that Party No. 1 is a Central Government undertaking and is engaged in manufacturing and production of Handmade Papers and in the factory of Party No. 1 at Wardha, about 250 permanent employees were working and he was employed by Party No. 1 as a skilled labourer in February, 1991 and worked continuously and he was being paid @ Rs. 675/- per month and though he himself and 17 other workers engaged by Party No. 1 worked with Party No. 1 for several years, they were continued as temporary workers.

The further case of the workman is that since the date of his appointment, he worked continuously without any gap and he had put in 240 days of attendance in every year of service, but he was not made permanent in service and even though, he was doing the same work as done by the permanent workers, neither he was paid wages at par with the permanent employees nor given the benefits of bonus, E.S.I. Schemes and Provident Fund Scheme etc. and as Party No. 1 did not issue the attendance-cum-Wage Card to him and the other 17 temporary workers, on 18-11-1993, all of them issued a notice through an advocate to Party No. 1 to make them permanent and to give them all other benefits of permanent employees and soon after the receipt of the said notice, Party No. 1 did not allow him and other temporary workers to resume duty w.e.f. 20-11-1993 and he was informed by Party No.1 through Shri A. Datta that he would be allowed to resume duty in case of his consenting to work under the Contractor, but he refused the offer, as because, he had already worked with Party No. 1 for years together and was entitled to be made permanent in service as per the representation dated 18-11-1993 and though he approached Party No. 1 on 21-11-1993 and 22-11-1993, he was not provided with work,

so he alongwith the other 17 temporary workers on 22-11-1993 issued another notice, but inspite of the same, no work was provided to them, so they issued another notice through the advocate on 27-11-1993, but Party No. 1 neither replied to the notice nor provided him any work and thereafter also, he continuously approached and requested the Party No. 1 to provide him work, but Party No. 1 did not pay any heed to his request and after waiting for a long time, he approached the Labour Court, Nagpur by filing U.L.P.A. Complaint No. 765 of 1993 and the Labour Court vide its interim order, directed Party No. 1 to reinstate him in service, but no work was provided to him by Party No. 1 and Party No. 1 moved a revision application before the Industrial Court, Nagpur, against the order of the Labour Court raising objection of the Labour Court of having no jurisdiction to entertain and decide the matter pertaining to the establishment of the Central Government.

The further case of the workman is that out of the rest 17 retrenched workers, five workers approached the Asstt. Labour Commissioner (Central), Nagpur ("the ALC" in short) and the said five workers were provided with work by Party No. 1, so he withdrew the case filed by him in the Labour Court, Nagpur and approached the ALC by filing an application under Section 2-A of the Act and the five workers, who had been provided work by Party No. 1 after their approaching the ALC were juniors to him and the ALC issued notice to Party No. 1 and Party No. 1 did not agree for any amicable settlement, so there was failure of the conciliation proceedings and the ALC submitted the failure report to the Central Government.

It is also pleaded by the workman that Party No. 1 had issued experience certificate in his favour and before terminating his services, Party No. 1 neither issued one month's notice nor paid notice pay in lieu of the notice or retrenchment compensation as provided under Section 25-F of the Act and therefore, his removal/retrenchment from services is illegal, improper and contrary to law and he is entitled for reinstatement in services with full back wages alongwith all monetary benefits of permanent employee, from the date of joining the service of Party No. 1 till the date of actual reinstatement and work is still available with Party No. 1 and Party No. 1 engaged new persons on less wages for more production.

The further case of the workman is that he was reinstated in service by Party No. 1 in August, 1994 and he worked till January, 1996 and he was again retrenched from services vide notice dated 09-02-1996 and the retrenchment was itself illegal, as because, the Party No. 1 did not pay all the legal dues at the time of retrenchment compensation was not paid in accordance with law and his retrenchment was again challenged before the ALC (C), Nagpur and the conciliation proceedings ended in failure, the reference had been made by the Central Govt. for adjudication.

3. The Party No. 1 in the written statement has pleaded inter-alia that it does not have any Managing Director, but only a Director of Handmade Paper Industry, which runs under Khadi and Village Industries Commission ("KVIC" in short) and KVIC is a statutory body, which was created by the statute, "Khadi & Village Industries Commission Act, 1956" and KVIC is functioning under the Ministry of Industry, Government of India and to achieve the object entrusted to KVIC, several Research and Training Centers were established including the J.B. Research Institute at Wardha, to provide artisan training courses for Handmade Paper Industries, but the unit so established at Wardha was handed over to a local institution, namely, "Khadi Gramodhyog Sangh, Manganwadi, Wardha, for the purpose of continuing the production activities and in 1984, the management of the said unit was taken over by it and it was decided to use the said unit as a demonstration-cum-extension Centre, for conducting experiments and testing etc. and arranging training of skilled workers and two technical persons were posted to look after the work and the unit finally started its Science & Technology (Research) work and for that some workers were engaged on daily wages, from November, 1984 and the work involved were of research and training and therefore not a continuous work and the workers were engaged as per requirements of work and after completion of the work, they were discontinued and none of the workers was engaged on continuous basis and the said unit functioned from 1984 to 1988 and when the unit was doing a prestigious research work of developing a process for making stiff, thick and hard water proof board by using completely waste banana stem, the workers stopped attending the work from 11-01-1988 and when enquiry was made for their non attendance, it was informed that they wanted regular work without break and unless and until their such demand would be fulfilled, they would not join the work.

It is further pleaded by Party No. 1 that six of the daily wages workers lodged complaint with the ALC and worker Shankar Rao Ingle approached the Labour court, Nagpur and a written statement was filed by KVIC raising the question of jurisdiction and the said case continued till 1991 without adjudication and there was a joint discussion on 18-01-1991 between the six workers, who had made complaint to ALC and the in charge of the unit at Wardha and it was informed to the ALC that under Production Marketing and Training Programme of KVIC, the unit would start functioning from 01-02-1991, where all the six workers could be engaged on daily wages, as such, the ALC closed the case with the instruction to inform him about the appointment and appointment letters dated 28-01-1991 were issued to the said six workers including Shankar Rao Ingle, directing them to join work and out of them, five workers joined their duties and the appointment of Shankar Rao Ingle was made with the condition of

withdrawal of the case filed by him, but Shankar Rao Ingle neither withdrew the case nor joined work and one of the conditions of appointment of the rest five workers was that they would enter into an agreement with its management and the finalization of the agreement took a long time and on 19-11-1993, a meeting was held with all the workers and in the presence of the then Director, Regional Office, KVIC, Wardha, the workers were requested to enter into the agreement, which was at par with another unit of Handmade Paper at Pune and the workers requested for two to three days time to give their consent, however, on 22-11-1993, the workers sent a letter informing their unwillingness to work on contract basis and that they would work only on daily wages basis and it was surprised to note that when the workers were provided work on daily wages basis in 1988, they demanded continuous work and when they were offered continuous work under Production Marketing and Training Programme in 1991, they refused to enter into an agreement and to work on contract basis, refusing to adhere to the condition of appointment and the workers could not be continued due to their refusal to enter into the agreement and their discontinuance from work was on their own accord and workers had stalled the Research Programme in 1988 and the unit had to remain close till 1991.

Party No. 1 has further pleaded that five workers approached the ALC (Central), Nagpur vide their complaint dated 22.11.1993, complaining that they were illegally terminated and the conciliation proceedings ended in failure and on submission of the failure reports by the ALC (Central), Nagpur, the Central Government refused to refer the cases of the said five workers for adjudication, by order dated 20.01.1995.

The further case of the Party No. 1 is that in the meantime, in the complaints filed by the workers in the Labour Court, Nagpur interim order was passed on 31-05-1994 directing it to reinstate the complainants and it filed revision before the Industrial Court against the order dated 31-05-1994 and on 17-08-1994, by way of pursis, the workers gave the undertaking before the Industrial Court not to proceed with the complaint filed before the Labour Court and in view of the withdrawal of the complaint by the workers, it also withdrew the revision from the Industrial Court on 10-04-1995 and on the basis of the orders of the Ministry, the Directorate of Handmade Paper Industry, Central Office at Mumbai moved a note to the commission to close down the production and Marketing activities of the unit and subsequently, the commission in its 449 the meeting dated 20-12-1995 decided to close down the activities and retrench all daily wage workers and on the basis of the commission's decision, all workers were served with the retrenchment notice alongwith the retrenchment compensation on 09-02-1996 and some workers, who had left the work as far back as 1993 were also given the retrenchment benefit.

The specific case of the Party No. 1 is that the workman was given appointment in February, 1991 on temporary basis for a fixed period till 31-12-1991 and he did not work continuously since the date of his appointment and he worked intermittently on daily wages, as and when work was available and as the workers denied to enter into an agreement, the production activities were stopped and presently, it is engaged only in providing Artisan training and in the year 1993, there were only two permanent Handmade Paper staff and four JBCRI staff and at present, there are only one Handmade Paper staff and three permanent JBCRI staff and the unit at Wardha had to be closed from 11-01-1988 to 1991, as the daily wage workers left the work and the unit again started functioning from 01-02-1991 and the workman approached it for appointment and on assurance of the workman to enter into an agreement, he was appointed from 23-09-1991, but in November, 1993, when the workman was asked to enter into an agreement, he refused as was done by other workers and due to the refusal of the workman for entering into the agreement, which was the condition of appointment in 1991, he could not be given work and the workman was not reinstated in service in August, 1994 and it is false to state that he worked till January, 1996 and the claim of the workman that he had put in continuous service of 240 days is false and as such, question of not allowing him to join work does not arise and the workman is not entitled to any relief.

4. In the rejoinder, the workman has denied the allegations made in the written statement and reiterated the facts mentioned in the statement of claim. It is further pleaded by the workman in the rejoinder that he was orally terminated w.e.f. 22-11-1993 and due to the intervention of the ALC, the workers were again allowed to resume their duties and thereafter, the workers demanded for their legitimate rights including payment of wages applicable to them and Party No. 1 with malafide intension decided to stop the work, instead of implementing the statutory law and he was provided with work from 1st, February, 1991 as per the order issued to the workers including himself individually and he worked continuously till 22-11-1993 and he was orally terminated from services w.e.f. 22-11-1993, without service of one month's notice or payment of one month's pay in lieu of notice or retrenchment compensation and his oral termination is illegal, improper and contrary to law.

5. It is to be mentioned here that this reference alongwith references No. 160 to 167, 169 to 174 and 176 to 178 of 2002 had been disposed of by this Tribunal by a common award dated 27-03-2007, directing the reinstatement of the workman and other petitioners. Being aggrieved by the said award, the Party No. 1 approached the Hon'ble High Court, Nagpur Bench in Writ Petition No. 4503/2007 and the Hon'ble High Court by order dated 25-08-2008 have been pleased to pass the following orders:-

“In view of the above, the impugned award dated 27.03.2007 passed by the Industrial Tribunal –cum-Labour Court, Nagpur in case Nos. 160/2002 to 167/2002,169/2002 to 173 and 175 to 178/2002 is quashed and set aside. The Tribunal is directed to allow the parties to lead further evidence, if they so desire and decided the cases thereafter. The Tribunal is directed to decide the reference in case Nos. 174/2002 to 178/2002 by common or separate awards as he deems fit and proper on the basis of the evidence led by the parties.”

According to the direction of the Hon’ble High Court, the parties were given the chance of leading further evidence.

The workman, who had examined himself as a witness in support of his case did not adduce further evidence.

However, the Party No. 1 examined two witnesses, namely, Khandeswar Pralhad Gondane and Milind Wakode and produced documentary evidence in support of its case, besides the evidence already adduced.

6. The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim and rejoinder. The workman in his cross-examination has stated that he worked continuously from 1985 to November, 1993. He has denied the suggestion that he did not work for 240 days in any calendar year. The workman in his cross-examination has further stated that on 09-02-1996, one registered letter, M-2 was sent to him, but he returned the same. The workman has admitted that the factory was closed from 1988 to 1991 and he did not work from January, 1988.

7. The first witness for Party No. 1 is Amitabh Datta, an Asstt. Director of Party No. 1. The evidence of witness, Amitabh is on affidavit. In his examination in chief on affidavit, in paragraph 8, this witness has stated that, “the party No. 2 was given appointment vide letter 23-09-1991 on temporary basis. The appointment was for a fixed period until 31-12-1991, that party No. 2 however did not join the work.” In paragraph 11 of his affidavit this witness has stated that, “However the unit was again started from 01-02-1991 and the Party No. 2 were served appointment letter dated 28.01.1991 to join, with conditions that they have to enter into an agreement. That when in 1993 the workers including Party No. 2 was asked to sign the agreement. Instead of signing the agreement the workers including Party No. 2 sent letter dated 22-11-1993 informing that they are not ready to work on contract basis and will work on daily wages. That in absence of entering into the agreement which was the condition of appointment the workers could not be given work and they did not work after 22-11-1993. It is denied that party No. 2 was reinstated in service from August, 94 to Jan. 1998. It is denied that the retrenchment dated 9-2-1996 was illegal, on the contrary

though the Party No. 2 had not worked after 22-11-1993, nor was entitled to, he was given the benefits alongwith other workers. The retrenchment notice alongwith the compensation was sent to all the workers including the Party No. 2.”

In his cross-examination, this witness has stated that he was posted at Wardha from 1984 to 1995 and he knows the workman and the workman was working from 1985 at Wardha. In his cross-examination, this witness has categorically admitted that the workman had worked continuously from 1991 to 1993.

8. The witness no.2 examined by Party No. 1 is Khandeswar Pralhad Gondane. The examination-in-chief on affidavit of this witness is in the line of the stands taken by the Party No. 1 in the written statement. In paragraph 3 of his affidavit, this witness has stated that, “party no. 2 as well as other employees were never in continuous employment with Party No. 1. They had not completed 240 days with Party No. 1. Despite this, they were offered with closure compensation alongwith all other legal dues.” Demolishing his own evidence given in the examination-in-chief, in his cross-examination, this witness has stated that he is working with Handmade Paper from 17-07-1992 and the workman was working with Handmade Paper prior to his joining in service and he was also working even after his joining service in 1992. This witness has categorically admitted that the workman worked for more than 240 days in every calendar year.

9. The third witness for Party No. 1 is Milind Wakode, the Divisional Director, Nagpur. In his examination-in-chief on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. This witness has further stated that the Handmade Paper Unit at Wardha had been completely closed as per the decision of the commission in its 449th meeting held on 25-12-1995 and retrenchment notice alongwith compensation was sent to all the workers by letter dated 09/10-02-1996. This witness has also proved the office copy of the termination order as Ext. M-II.

In his cross-examination, this witness has stated that Ext. M-II is dated 09-02-1996 and he cannot say the exact date of termination of the workman and Ext. M-III is the office copy of the order dated 31-01-1991 and Ext. M-III was issued after the engagement of the workman by the management and as per condition No. 7 of Ext. M-III, the workman was to execute an agreement as prescribed by the office of Handmade Paper, Khadi Board, Pune and as the workman did not agree to execute any agreement, he was not provided with work or made permanent and the workman was engaged as labourer on daily wages and he does not have any idea as to how the retrenchment compensation paid to the workman was calculated and as per Ext. M-II, retrenchment compensation was paid to the workman for 3 years i.e. for 45 days.

10. At the time of argument, it was submitted by the learned advocate for the workman that the workman was working with the Party No. 1 as a skilled worker from February, 1991 and from the date of his initial appointment, the workman worked continuously and he had completed more than 240 days of work in each calendar year and from the date of completion of 240 days of work, the workman was entitled for regularization in service, but his services were not regularized and the workman was compelled to sign an illegal agreement and when he did not agree to sign the same, he was not allowed to join service from 22-11-1993 and the workman was again reinstated in service in August, 1994 and he worked till January, 1996 and again he was terminated from services and such terminations of the workman was without compliance of the mandatory provisions of Section 25-F of the Act and the termination amounts to retrenchment and the termination of the workman is illegal, arbitrary, malafide and contrary to the principles of natural justice and payment of retrenchment compensation in 1996 cannot cure such illegality and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1964 II LLJ-271 [Ambalal Shivlal Vs Vin (D.M.) and others], 1969 II LLJ-373 (Sivanandam Vs Press Superintendent, S. Railway, Madras), 1979 ILLJ-168 (B.M. Gupta Vs State of West Bengal), 1960 I LLJ – 251 (S.C.) (State of Bombay Vs Hospital Mazdoor Sabha) and 1964 I LLJ – 333 (S.C.) (Workmen of Subong Tea Estate Vs Subong Tea Estate).

11. On the other hand, it was submitted by the learned advocate for the Party No. 1 that the workman was given appointment on temporary basis for a fixed period i.e. till 31-12-1991 and he did not work continuously since the date of his appointment and he worked intermittently on daily wages as and when work was available and he did not complete 240 days of work in the preceding 12 calendar months of the alleged date of termination and the workman has not adduced any legal evidence on record to show that he had worked for 240 days in the preceding 12 months of the date of termination and the onus to prove such fact is on the workman, but he failed to discharge the onus by adducing necessary evidence and as such, he is not entitled for the benefits of the provisions of Section 25-F of the Act and as per the decision of the commissioner, the production activities of the unit was closed down and even though, the workman did not work after 1988, notice pay and retrenchment compensation was sent to him alongwith the retrenchment notice dated 09-02-1996 and Party No. 1 did not commit any illegality and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the Party No. 1 placed reliance on the decisions reported in the decisions reported in (2002) 3 SCC-25 (Range Forest Officer Vs. S.T. Hadimani), (2004) 8 SCC-195 (Municipal Corporation, Faridabad Vs. Siri Niwas), (2005) 8 SCC-481 (Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh), (2005) 8 SCC-750 (Surendra Nagar District Panchayat vs. Dahyabhai Amarsingh), (2006) 2 SCC-716 (M. P. State Agro Industries Development Corpn. Ltd. vs. S.C. pandey), (2006) 5 SCC-173 (Municipal Council, Sujanpur vs. Surinder Singh), (2006) 9 SCC-697 (Krishna Bhagyajal Nigam Ltd. vs. Mohd. Rafi), (2006) 9 SCC-132 (Surendranagar Distt. Panchayat vs. Ganga Ben Laljibhai), (2006) 9 SCC-124 (Chief Engineer Ranjit Sagar Dam vs. Sham Lal), (2006) 6 SCC-275 (Rajasthan Tourism Development Corporation vs. Intejam Alizafri), (2006) 5 SCC-127 (Nagar Mahapalika vs. State of U.P.), (2006) 1 SCC-106 (R.M. Yellati vs. Asstt. Executive Engineer), (2006) 2 SCC-711 (State of M.P. vs. Arjunlal Rajak), (2007) 13 SCC-343 (Ranip Nagar Palika vs. Babuji Gabhaji Thakore), (2007) 12-172 (State of Maharashtra vs. Dattatraya Digamber Birajdar), 2008 II CLR 1089 (State of Haryana vs. Ramesh Kumar), (2008) 3 SCC-474 (BSNL vs. Mahesh Chand), (2008) 5 SCC-171 (Municipal Corporation, Faridabad vs. Durga Prasad) and (2009) 17 SCC-326 (Ajnala Cooperative Sugar Mills Ltd. vs. Sukhraj Singh).

It is settled beyond doubt by the Hon'ble Apex Court in different judgments including the judgments cited by the learned advocate for the party No.1 that where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it is for the claimant to lead evidence to that effect and the workman's affidavit is not sufficient evidence for that purpose.

Keeping in view the principles as mentioned above, now, the present case at hand is to be considered.

12. To prove that he had worked for 240 days in the preceding 12 months of the date of termination, the workman has given his own evidence on affidavit. Though, the workman has not produced any other evidence in support of his such claim, his evidence has been corroborated by the evidence of the witnesses no.1 and 2 of the party No. 1. As already mentioned above, Amitabh Datta, the witness No.1 for party No. 1 has stated that the workman worked continuously from 1991 to 1993. Khandeswar Pralhad Gondane, witness No. 2 for the party No. 1 has stated that the workman worked for more than 240 days in every calendar year.

13. Apart from the oral evidence, the documentary evidence produced by the party No. 1 clinches the issue in favour of the workman. The party No. 1 has produced and proved the notice of retrenchment dated 09/12.02.1996 issued to the workman as Ext. M-II. In Ext. M-II, it has

been mentioned that the workman joined in February, 1991 and worked from February, 1991 to November, 1993 and from August, 1994 to January, 1996 and he is entitled for retrenchment compensation for four and half years i.e. for 67 days at the rate of 15 days per year. So, it is clear from the materials on record that the workman infact had worked for more than 240 days in the preceding 12 calendar months of the date of his termination i.e. 12-02-1996. It is also found from the material on record that before the termination of the workman from services, the mandatory provisions of Section 25-F of the Act were not complied with and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him. So, the termination of the workman from services amounts to retrenchment and such termination is illegal.

Applying the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocate for the workman to the case in hand, it is found that the issuance of the retrenchment notice as per Ext. M-II and sending of the demand draft towards retrenchment compensation and one month's wages on 09/10.02.1996 does not cure the illegality of termination of the services of the workman w.e.f. 12-02-1996.

14. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh) after taking into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal Council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (In charge Officer Vs. Shankar Setty.) have been pleased to hold that:-

"In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager in 1991, about 23 years back. It is also found that he continued as such till 22.11.1993, when he was terminated from services by party no.1. It is also found that production and marketing activities of the handmade paper unit, Wardha has been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 1,15,000 (Rupees one lakh fifteen thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered :—

ORDER

The action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Vijay G. Kanode, is illegal and unjustified. The workman is entitled for monetary compensation of Rs. 1,15,000 (Rupees one lakh fifteen thousand only) in lieu of reinstatement. He is not entitled for any other relief. The party no.1 is directed to pay the monetary compensation of Rs. 1,15,000 to the workman Shri Vijay G. Kanode, within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 percent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1185.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर हैंडमेड पेपर प्रोडक्शन खादी और विलेज इंडस्ट्रीज कमीशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/174/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-42012/123/96-आईआर(डीयू)
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March , 2014

S.O. 1185.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/ NGP/174/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure, in

the industrial dispute between the employers in relation to the management of the Director, Handmade Paper Production Khadi & Village Industrial Commission and their workmen, which was received by the Central Government on 24-03-2014.

[No. L-42012/123/96-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/174/2002

Date: 03-03-2014.

Party No. 1 : The Director,
Handmade Paper Production
Marketing and Training Centre,
Khadi & Village Industries
Commission,
Wardha-442001.

Versus

Party No. 2 : Shri Manohar Shravanji Somnathe,
R/o Sindhi Meghe, Near Gram
Panchyat,
Wardha – 442001.

AWARD

(Dated: 3rd March, 2014)

In exercise of the powers conferred by clause (d) of Sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Handmade Paper Production and Training Centre and their workman, Shri Manohar Shravanji Somnathe, for adjudication, as per letter No. L-42012/123/96-IR(DU) dated 09-07-1997, with the following schedule:-

"Whether the action of the management of the Director, Khadi and Village Industrial Commission, Handmade Paper Production, Marketing and Training Centre, J.B. Central Research Institute, Manganwadi, Wardha in terminating the services of Shri Manohar Shravanji Somnathe, an unskilled worker w.e.f. 12-02-1996 by way of retrenchment is legal, proper and just? If not, to what relief the worker is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Manohar Shravanji Somnathe, ('the workman" in

short), filed the statement of claim and the management of Handmade Paper Production and Training Centre, Wardha ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that Party No. 1 is a Central Government undertaking and is engaged in manufacturing and production of Handmade Papers and in the factory of Party No. 1 at Wardha, about 250 permanent employees were working and he was employed by Party No. 1 as a helper on 23-09-1991 and worked continuously and he was being paid @ Rs. 675 per month and though he himself and 17 other workers engaged by Party No. 1 worked with Party No. 1 for several years, they were continued as temporary workers.

The further case of the workman is that since the date of his appointment, he worked continuously without any gap and he had put in 240 days of attendance in every year of service, but he was not made permanent in service and even though, he was doing the same work as done by the permanent workers, neither he was paid wages at par with the permanent employees nor given the benefits of bonus, E.S.I. Schemes and Provident Fund Scheme etc and as Party No. 1 did not issue the attendance-cum-Wage Card to him and the other 17 temporary workers, on 18-11-1993, all of them issued a notice through an advocate to Party No 1 to make them permanent and to give them all other benefits of permanent employees and soon after the receipt of the said notice, Party No. 1 did not allow him and other temporary workers to resume duty w.e.f. 20-11-1993 and he was informed by Party No.1 through Shri A. Datta that he would be allowed to resume duty in case of his consenting to work under the Contractor, but he refused the offer, as because, he had already worked with Party No. 1 for years together and was entitled to be made permanent in service as per the representation dated 18-11-1993 and though he approached Party No. 1 on 21-11-1993 and 22-11-1993, he was not provided with work, so he alongwith the other 17 temporary workers on 22-11-1993 issued another notice, but inspite of the same, no work was provided to them, so they issued another notice through the advocate on 27-11-1993, but Party No. 1 neither replied to the notice nor provided him any work and thereafter also, he continuously approached and requested the Party No. 1 to provide him work, but Party No. 1 did not pay any heed to his request and after waiting for a long time, he approached the Labour Court, Nagpur by filing U.L.P.A. Complaint No. 765 of 1993 and the Labour Court vide its interim order, directed Party No. 1 to reinstate him in service, but no work was provided to him by Party No. 1 and Party No. 1 moved a revision application before the Industrial Court, Nagpur, against the order of the Labour Court raising objection of the Labour Court of having no jurisdiction to entertain and decide the matter pertaining to the establishment of the Central Government.

The further case of the workman is that out of the rest 17 retrenched workers, five workers approached the Asstt. Labour Commissioner (Central), Nagpur ("the ALC" in short) and the said five workers were provided with work by Party No. 1, so he withdrew the case filed by him in the Labour Court, Nagpur and approached the ALC by filing an application under Section 2-A of the Act and the five workers, who had been provided work by Party No. 1 after their approaching the ALC were juniors to him and the ALC issued notice to Party No. 1 and Party No. 1 did not agree for any amicable settlement, so there was failure of the conciliation proceedings and the ALC submitted the failure report to the Central Government.

It is also pleaded by the workman that Party No. 1 had issued experience certificate in his favour and before terminating his services, Party No. 1 neither issued one month's notice nor paid notice pay in lieu of the notice or retrenchment compensation as provided under Section 25-F of the Act and therefore, his removal/retrenchment from services is illegal, improper and contrary to law and he is entitled for reinstatement in services with full back wages alongwith all monetary benefits of permanent employee, from the date of joining the service of Party No. 1 till the date of actual reinstatement and work is still available with Party No. 1 and Party No. 1 engaged new persons on less wages for more production.

The further case of the workman is that he was reinstated in service by Party No. 1 in August, 1994 and he worked till January, 1996 and he was again retrenched from services vide notice dated 09-02-1996 and the retrenchment was itself illegal, as because, the Party No. 1 did not pay all the legal dues at the time of retrenchment compensation was not paid in accordance with law and his retrenchment was again challenged before the ALC (C), Nagpur and the conciliation proceedings ended in failure, the reference had been made by the Central Govt. for adjudication.

3. The Party No. 1 in the written statement has pleaded inter-alia that it does not have any Managing Director, but only a Director of Handmade Paper Industry, which runs under Khadi and Village Industries Commission ("KVIC" in short) and KVIC is a statutory body, which was created by the statute, "Khadi & Village Industries commission Act, 1956" and KVIC is functioning under the Ministry of Industry, Government of India and to achieve the object entrusted to KVIC, several Research and Training Centers were established including the J. B. Research Institute at Wardha, to provide artisan training courses for Handmade Paper Industries, but the unit so established at Wardha was handed over to a local institution, namely, "Khadi Gramodhyog Sangh, Manganwadi, Wardha, for the purpose of continuing the production activities and in 1984, the management of the said unit was taken over by it and it was decided to use

the said unit as a demonstration-cum-extension Centre, for conducting experiments and testing etc. and arranging training of skilled workers and two technical persons were posted to look after the work and the unit finally started its Science & Technology (Research) work and for that some workers were engaged on daily wages, from November, 1984 and the work involved were of research and training and therefore not a continuous work and the workers were engaged as per requirements of work and after completion of the work, they were discontinued and none of the workers was engaged on continuous basis and the said unit functioned from 1984 to 1988 and when the unit was doing a prestigious research work of developing a process for making stiff, thick and hard water proof board by using completely waste banana stem, the workers stopped attending the work from 11-01-1988 and when enquiry was made for their non attendance, it was informed that they wanted regular work without break and unless and until their such demand would be fulfilled, they would not join the work.

It is further pleaded by Party No. 1 that six of the daily wages workers lodged complaint with the ALC and worker Shankar Rao Ingle approached the Labour court, Nagpur and a written statement was filed by KVIC raising the question of jurisdiction and the said case continued till 1991 without adjudication and there was a joint discussion on 18-01-1991 between the six workers, who had made complaint to ALC and the in charge of the unit at Wardha and it was informed to the ALC that under Production Marketing and Training Programme of KVIC, the unit would start functioning from 01-02-1991, where all the six workers could be engaged on daily wages, as such, the ALC closed the case with the instruction to inform him about the appointment and appointment letters dated 28-01-1991 were issued to the said six workers including Shankar Rao Ingle, directing them to join work and out of them, five workers joined their duties and the appointment of Shankar Rao Ingle was made with the condition of withdrawal of the case filed by him, but Shankar Rao Ingle neither withdrew the case nor joined work and one of the conditions of appointment of the rest five workers was that they would enter into an agreement with its management and the finalization of the agreement took a long time and on 19-11-1993, a meeting was held with all the workers and in the presence of the then Director, Regional Office, KVIC, Wardha, the workers were requested to enter into the agreement, which was at par with another unit of Handmade Paper at Pune and the workers requested for two to three days time to give their consent, however, on 22-11-1993, the workers sent a letter informing their unwillingness to work on contract basis and that they would work only on daily wages basis and it was surprised to note that when the workers were provided work on daily wages basis in 1988, they demanded continuous work and when they were offered continuous

work under Production Marketing and Training Programme in 1991, they refused to enter into an agreement and to work on contract basis, refusing to adhere to the condition of appointment and the workers could not be continued due to their refusal to enter into the agreement and their discontinuance from work was on their own accord and workers had stalled the Research Programme in 1988 and the unit had to remain close till 1991.

Party No. 1 has further pleaded that five workers approached the ALC (Central), Nagpur vide their complaint dated 22-11-1993, complaining that they were illegally terminated and the conciliation proceedings ended in failure and on submission of the failure reports by the ALC (Central), Nagpur, the Central Government refused to refer the cases of the said five workers for adjudication, by order dated 20-01-1995.

The further case of the Party No. 1 is that in the meantime, in the complaints filed by the workers in the Labour Court, Nagpur interim order was passed on 31-05-1994 directing it to reinstate the complainants and it filed revision before the Industrial Court against the order dated 31.05.1994 and on 17.08.1994, by way of pursis, the workers gave the undertaking before the Industrial Court not to proceed with the complaint filed before the Labour Court and in view of the withdrawal of the complaint by the workers, it also withdrew the revision from the Industrial Court on 10-04-1995 and on the basis of the orders of the Ministry, the Directorate of Handmade Paper Industry, Central Office at Mumbai moved a note to the commission to close down the production and Marketing activities of the unit and subsequently, the commission in its 449 the meeting dated 20-12-1995 decided to close down the activities and retrench all daily wage workers and on the basis of the commission's decision, all workers were served with the retrenchment notice alongwith the retrenchment compensation on 09-02-1996 and some workers, who had left the work as far back as 1993 were also given the retrenchment benefit.

The specific case of the Party No. 1 is that the workman was given appointment from 23-09-1991 on temporary basis for a fixed period till 31-12-1991 and he did not work continuously since the date of his appointment and he worked intermittently on daily wages, as and when work was available and as the workers denied to enter into an agreement, the production activities were stopped and presently, it is engaged only in providing Artisan training and in the year 1993, there were only two permanent Handmade Paper staff and four JBCRI staff and at present, there are only one Handmade Paper staff and three permanent JBCRI staff and the unit at Wardha had to be closed from 11-01-1988 to 1991, as the daily wage workers left the work and the unit again started functioning from 01-02-1991 and the workman approached it for appointment and on assurance of the workman to

enter into an agreement, he was appointed from 23-09-1991, but in November, 1993, when the workman was asked to enter into an agreement, he refused as was done by other workers and due to the refusal of the workman for entering into the agreement, which was the condition of appointment in 1991, he could not be given work and the workman was not reinstated in service in August, 1994 and it is false to state that he worked till January, 1996 and the claim of the workman that he had put in continuous service of 240 days is false and as such, question of not allowing him to join work does not arise and the workman is not entitled to any relief.

4. In the rejoinder, the workman has denied the allegations made in the written statement and reiterated the facts mentioned in the statement of claim. It is further pleaded by the workman in the rejoinder that he was orally terminated w.e.f. 22-11-1993 and due to the intervention of the ALC, the workers were again allowed to resume their duties and thereafter, the workers demanded for their legitimate rights including payment of wages applicable to them and Party No. 1 with malafide intension decided to stop the work, instead of implementing the statutory law and he was provided with work from 1st, February, 1991 as per the order issued to the workers including himself individually and he worked continuously till 22-11-1993 and he was orally terminated from services w.e.f. 22.11.1993, without service of one month's notice or payment of one month's pay in lieu of notice or retrenchment compensation and his oral termination is illegal, improper and contrary to law.

5. It is to be mentioned here that this reference alongwith references No. 160 to 167 and 169 to 178 of 2002 had been disposed of by this Tribunal by a common award dated 27.03.2007, directing the reinstatement of the workman and other petitioners. Being aggrieved by the said award, the Party No. 1 approached the Hon'ble High Court, Nagpur Bench in Writ Petition No. 4503/2007 and the Hon'ble High Court by order dated 25.08.2008 have been pleased to pass the following orders:-

"In view of the above, the impugned award dated 27.03.2007 passed by the Industrial Tribunal –cum-Labour Court, Nagpur in case Nos. 160/2002 to 167/2002, 169/2002 to 173 and 175 to 178/2002 is quashed and set aside. The Tribunal is directed to allow the parties to lead further evidence, if they so desire and decided the cases thereafter. The Tribunal is directed to decide the reference in case Nos. 174/2002 to 178/2002 by common or separate awards as he deems fit and proper on the basis of the evidence led by the parties."

According to the direction of the Hon'ble High Court, the parties were given the chance of leading further evidence.

The workman, who had examined himself as a witness in support of his case did not adduce further evidence.

However, the Party No. 1 examined two witnesses, namely, Khandeswar Pralhad Gondane and Milind Wakode and produced documentary evidence in support of its case, besides the evidence already adduced.

6. The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim and rejoinder. The workman in his cross-examination has stated that he worked continuously from 1985 to November, 1993. He has denied the suggestion that he did not work for 240 days in any calendar year. The workman in his cross-examination has further stated that on 09.02.1996, one registered letter, M-2 was sent to him, but he returned the same. The workman has admitted that the factory was closed from 1988 to 1991 and he did not work from January, 1988.

7. The first witness for Party No. 1 is Amitabh Datta, an Asstt. Director of Party No. 1. The evidence of witness, Amitabh is on affidavit. In his examination in chief on affidavit, in paragraph 8, this witness has stated that, “the party No. 2 was given appointment vide letter 23-09-1991 on temporary basis. The appointment was for a fixed period until 31-12-1991, that party No. 2 however did not join the work.” In paragraph 11 of his affidavit this witness has stated that, “However the unit was again started from 01-02-1991 and the Party No. 2 were served appointment letter dated 28.01.1991 to join, with conditions that they have to enter into an agreement. That when in 1993 the workers including Party No. 2 was asked to sign the agreement. Instead of signing the agreement the workers including Party No. 2 sent letter dated 22-11-1993 informing that they are not ready to work on contract basis and will work on daily wages. That in absence of entering into the agreement which was the condition of appointment the workers could not be given work and they did not work after 22-11-1993. It is denied that party No. 2 was reinstated in service from August, 94 to Jan. 1998. It is denied that the retrenchment dated 9-2-1996 was illegal, on the contrary though the Party No. 2 had not worked after 22-11-1993, nor was entitled to, he was given the benefits alongwith other workers. The retrenchment notice alongwith the compensation was sent to all the workers including the Party No. 2.”

In his cross-examination, this witness has stated that he was posted at Wardha from 1984 to 1995 and he knows the workman and the workman was working from 1985 at Wardha. In his cross-examination, this witness has categorically admitted that the workman had worked continuously from 1991 to 1993.

8. The witness no.2 examined by Party No. 1 is Khandeswar Pralhad Gondane. The examination-in-chief

on affidavit of this witness is in the line of the stands taken by the Party No. 1 in the written statement. In paragraph 3 of his affidavit, this witness has stated that, “party no. 2 as well as other employees were never in continuous employment with Party No. 1. They had not completed 240 days with Party No. 1. Despite this, they were offered with closure compensation alongwith all other legal dues.” Demolishing his own evidence given in the examination-in-chief, in his cross-examination, this witness has stated that he is working with Handmade Paper from 17.07.1992 and the workman was working with Handmade Paper prior to his joining in service and he was also working even after his joining service in 1992. This witness has categorically admitted that the workman worked for more than 240 days in every calendar year.

9. The third witness for Party No. 1 is Milind Wakode, the Divisional Director, Nagpur. In his examination-in-chief on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. This witness has further stated that the Handmade Paper Unit at Wardha had been completely closed as per the decision of the commission in its 449th meeting held on 25-12-1995 and retrenchment notice alongwith compensation was sent to all the workers by letter dated 09/10.02.1996. This witness has also proved the office copy of the termination order as Ext. M-II.

In his cross-examination, this witness has stated that Ext. M-II is dated 09-02-1996 and he cannot say the exact date of termination of the workman and Ext. M-III is the office copy of the order dated 31-01-1991 and Ext. M-III was issued after the engagement of the workman by the management and as per condition No. 7 of Ext. M-III, the workman was to execute an agreement as prescribed by the office of Handmade Paper, Khadi Board, Pune and as the workman did not agree to execute any agreement, he was not provided with work or made permanent and the workman was engaged as labourer on daily wages and he does not have any idea as to how the retrenchment compensation paid to the workman was calculated and as per Ext. M-II, retrenchment compensation was paid to the workman for 3 years i.e. for 45 days.

10. At the time of argument, it was submitted by the learned advocate for the workman that the workman was working with the Party No. 1 as a helper w.e.f. 23-09-1991 and from the date of his initial appointment, the workman worked continuously and he had completed more than 240 days of work in each calendar year and from the date of completion of 240 days of work, the workman was entitled for regularization in service, but his services were not regularized and the workman was compelled to sign an illegal agreement and when he did not agree to sign the same, he was not allowed to join service from 22-11-1993 and the workman was again reinstated in service in August, 1994 and he worked till January, 1996 and again

he was terminated from services and such terminations of the workman was without compliance of the mandatory provisions of Section 25-F of the Act and the termination amounts to retrenchment and the termination of the workman is illegal, arbitrary, mala fide and contrary to the principles of natural justice and payment of retrenchment compensation in 1996 cannot cure such illegality and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1964 II LLJ-271 (Ambalal Shivalal Vs Vin (D.M.) and others), 1969 II LLJ-373 (Sivanandam Vs Press Superintendent, S. Railway, Madras), 1979 I LLJ-168 (B.M. Gupta Vs State of West Bengal), 1960 I LLJ – 251 (S.C.) (State of Bombay Vs Hospital Mazdoor Sabha) and 1964 I LLJ – 333 (S.C.) (Workmen of Subong Tea Estate Vs Subong Tea Estate).

11. On the other hand, it was submitted by the learned advocate for the Party No. 1 that the workman was given appointment on temporary basis for a fixed period i.e. till 31.12.1991 and he did not work continuously since the date of his appointment and he worked intermittently on daily wages as and when work was available and he did not complete 240 days of work in the preceding 12 calendar months of the alleged date of termination and the workman has not adduced any legal evidence on record to show that he had worked for 240 days in the preceding 12 months of the date of termination and the onus to prove such fact is on the workman, but he failed to discharge the onus by adducing necessary evidence and as such, he is not entitled for the benefits of the provisions of Section 25-F of the Act and as per the decision of the commissioner, the production activities of the unit was closed down and even though, the workman did not work after 1988, notice pay and retrenchment compensation was sent to him alongwith the retrenchment notice dated 09.02.1996 and Party No. 1 did not commit any illegality and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the Party No. 1 placed reliance on the decisions reported in the decisions reported in (2002) 3 SCC-25 (Range Forest Officer Vs. S.T. Hadimani), (2004) 8 SCC-195 (Municipal Corporation, Faridabad Vs. Siri Niwas), (2005) 8 SCC-481 (Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh), (2005) 8 SCC-750 (Surendra Nagar District Panchayat vs. Dahyabhai Amarsingh), (2006) 2 SCC-716 (M.P. State Agro Industries Development Corpn. Ltd. Vs. S.C. pandey), (2006) 5 SCC-173 (Municipal Council, Sujanpur Vs. Surinder Singh), (2006) 9 SCC-697 (Krishna Bhagyajal Nigam Ltd. Vs. Mohd. Rafi), (2006) 9 SCC-132 (Surendranagar Distt. Panchayat vs. Ganga Ben Laljibhai), (2006) 9 SCC-124 (Chief Engineer Ranjit Sagar Dam vs. Sham Lal), (2006) 6 SCC-

275 (Rajasthan Tourism Development Corporation vs. Intejam Alizafri), (2006) 5 SCC-127 (Nagar Mahapalika vs. State of U.P.), (2006) 1 SCC-106 (R.M. Yellati vs. Asstt. Executive Engineer), (2006) 2 SCC-711 (State of M.P. vs. Arjunlal Rajak), (2007) 13 SCC-343 (Ranip Nagar Palika vs. Babuji Gabhaji Thakore), (2007) 12-172 (State of Maharashtra vs. Dattatraya Digamber Birajdar), 2008 II CLR 1089 (State of Haryana vs. Ramesh Kumar), (2008) 3 SCC-474 (BSNL vs. Mahesh Chand), (2008) 5 SCC-171 (Municipal Corporation, Faridabad vs. Durga Prasad) and (2009) 17 SCC-326 (Ajnala Cooperative Sugar Mills Ltd. vs. Sukhraj Singh).

It is settled beyond doubt by the Hon'ble Apex Court in different judgments including the judgments cited by the learned advocate for the party No. 1 that where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it is for the claimant to lead evidence to that effect and the workman's affidavit is not sufficient evidence for that purpose.

Keeping in view the principles as mentioned above, now, the present case at hand is to be considered.

12. To prove that he had worked for 240 days in the preceding 12 months of the date of termination, the workman has given his own evidence on affidavit. Though, the workman has not produced any other evidence in support of his such claim, his evidence has been corroborated by the evidence of the witnesses No.1 and 2 of the party No. 1. As already mentioned above, Amitabh Datta, the witness No.1 for party No. 1 has stated that the workman worked continuously from 1991 to 1993. Khandeswar Pralhad Gondane, witness No.2 for the party No.1 has stated that the workman worked for more than 240 days in every calendar year.

13. Apart from the oral evidence, the documentary evidence produced by the party No. 1 clinches the issue in favour of the workman. The party No. 1 has produced and proved the notice of retrenchment dated 09/12/20196 issued to the workman as Ext. M-II. In Ext. M-II, it has been mentioned that the workman joined in February, 1991 and worked from February, 1991 to November, 1993 and from August, 1994 to January, 1996 and he is entitled for retrenchment compensation for three and half years i.e. for 52 days at the rate of 15 days per year. So, it is clear from the materials on record that the workman infact had worked for more than 240 days in the preceding 12 calendar months of the date of his termination i.e. 12-02-1996. It is also found from the material on record that before the termination of the workman from services, the mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him. So, the termination of

the workman from services amounts to retrenchment and such termination is illegal.

Applying the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocate for the workman to the case in hand, it is found that the issuance of the retrenchment notice as per Ext. M-II and sending of the demand draft towards retrenchment compensation and one month's wages on 09/10.02.1996 does not cure the illegality of termination of the services of the workman w.e.f. 12.02.1996.

14. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh) after taking into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (In-charge Officer Vs. Shankar Setty.) have been pleased to hold that:-

"In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager in 1991, about 23 years back. It is also found that he continued as such till 22.11.1993, when he was terminated from services by party no.1. It is also found that production and marketing activities of the handmade paper unit, Wardha has been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into

consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 90,000/- (Rupees ninety thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Manohar Shravanji Somnath is illegal and unjustified. The workman is entitled for monetary compensation of Rs. 90,000 (Rupees ninety thousand only) in lieu of reinstatement. He is not entitled for any other relief. The party No.1 is directed to pay the monetary compensation of Rs. 90,000 to the workman Shri Manohar Shravanji Somnath within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 percent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1186.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर हैंडमेड पेपर प्रोडक्शन खादी और विलेज इंडस्ट्रीज कमीशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/173/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था।

[सं. एल-42012/80/95-आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March, 2014

S.O. 1186.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/NGP/173/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Director, Handmade Paper Production Khadi & Village Industrial Commission and their workman, which was received by the Central Government on 24-03-2014.

[No. L-42012/80/95-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/173/2002 Date: 03.03.2014.

Party No.1 : The Director,
Handmade Paper Production
Marketing and Training Centre,
Khadi & Village Industries
Commission,
Wardha-442001.

Versus

Party No.2 : Smt. Premila Maroti More,
R/o Gorakshan,
Ward No.42,
Tah. & Distt.-Wardha-442001.

AWARD

(Dated: 3rd March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Handmade Paper Production and Training Centre and their workman, Smt. Premila Maroti More for adjudication, as per letter No.L-42012/80/95-IR(DU) dated 27.06.1996, with the following schedule:-

"Whether the action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Smt. Premila Maroti More is proper, justified and legal? If not, to what relief the workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Smt. Premila Maroti More ('the workman" in short), filed the statement of claim and the management of Handmade Paper Production and Training Centre ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that Party No. 1 is a Central Government undertaking and is engaged in manufacturing and production of Handmade Papers and in the factory of Party No. 1 at Wardha, about 250 permanent employees were working and she was employed by Party No. 1 as a unskilled worker on 10.04.1984 and worked continuously and she was being paid @ Rs. 550 per month and though she herself and 17 other workers engaged by Party No. 1 worked with Party No. 1 for several years, they were continued as temporary workers.

The further case of the workman is that since the date of her appointment, she worked continuously without any gap and she had put in 240 days of attendance in every year of service, but she was not made permanent in service and even though, she was doing the same work as done by the permanent workers, neither she was paid wages at par with the permanent employees nor given the benefits of bonus, E.S.I. Schemes and Provident Fund Scheme etc.

and as Party No. 1 did not issue the attendance-cum-Wage Card to her and the other 17 temporary workers, on 18.11.1993, all of them issued a notice through an advocate to Party No 1 to make them permanent and to give them all other benefits of permanent employees and soon after the receipt of the said notice, Party No. 1 did not allow her and other temporary workers to resume duty w.e.f. 20.11.1993 and she was informed by Party No. 1 through Shri A. Datta that she would be allowed to resume duty in case of her consenting to work under the Contractor, but she refused the offer, as because, she had already worked with Party No. 1 for years together and was entitled to be made permanent in service as per the representation dated 18.11.1993 and though she approached Party No. 1 on 21.11.1993 and 22.11.1993, she was not provided with work, so she alongwith the other 17 temporary workers on 22.11.1993 issued another notice, but inspite of the same, no work was provided to them, so they issued another notice through the advocate on 27.11.1993, but Party No. 1 neither replied to the notice nor provided him any work and thereafter also, she continuously approached and requested the Party No. 1 to provide her work, but Party No. 1 did not pay any heed to her request and after waiting for a long time, she approached the Labour Court, Nagpur by filing U.L.P.A. Complaint No. 825 of 1993 and the Labour Court vide its interim order, directed Party No. 1 to reinstate her in service, but no work was provided to her by Party No. 1 and Party No. 1 moved a revision application before the Industrial Court, Nagpur, against the order of the Labour Court raising objection of the Labour Court of having no jurisdiction to entertain and decide the matter pertaining to the establishment of the Central Government.

The further case of the workman is that out of the rest 17 retrenched workers, five workers approached the Assstt. Labour Commissioner (Central), Nagpur ("the ALC" in short) and the said five workers were provided with work by Party No. 1, so she withdrew the case filed by her in the Labour Court, Nagpur and approached the ALC by filing an application under Section 2-A of the Act and the five workers, who had been provided work by Party No. 1 after their approaching the ALC were juniors to her and the ALC issued notice to Party No. 1 and Party No. 1 did not agree for any amicable settlement, so there was failure of the conciliation proceedings and the ALC submitted the failure report to the Central Government.

It is also pleaded by the workman that Party No. 1 had issued experience certificate in her favour and before terminating her services, Party No.1 neither issued one month's notice nor paid notice pay in lieu of the notice or retrenchment compensation as provided under Section 25-F of the Act and therefore, her removal/retrenchment from services is illegal, improper and contrary to law and she is entitled for reinstatement in services with full back wages alongwith all monetary benefits of permanent employee, from the date of joining the service of Party

No. 1 till the date of actual reinstatement and work is still available with Party No. 1 and Party No.1 engaged new persons on less wages for more production.

3. The Party No. 1 in the written statement has pleaded inter-alia that it does not have any Managing Director, but only a Director of Handmade Paper Industry, which runs under Khadi and Village Industries Commission (“KVIC” in short) and KVIC is a statutory body, which was created by the statute, “Khadi & Village Industries Commission Act, 1956” and KVIC is functioning under the Ministry of Industry, Government of India and to achieve the object entrusted to KVIC, several Research and Training Centers were established including the J.B. Research Institute at Wardha, to provide artisan training courses for Handmade Paper Industries, but the unit so established at Wardha was handed over to a local institution, namely, “Khadi Gramodhyog Sangh, Manganwadi, Wardha, for the purpose of continuing the production activities and in 1984, the management of the said unit was taken over by it and it was decided to use the said unit as a demonstration-cum-extension Centre, for conducting experiments and testing etc. and arranging training of skilled workers and two technical persons were posted to look after the work and the unit finally started its Science & Technology (Research) work and for that some workers were engaged on daily wages, from November, 1984 and the work involved were of research and training and therefore not a continuous work and the workers were engaged as per requirements of work and after completion of the work, they were discontinued and none of the workers was engaged on continuous basis and the said unit functioned from 1984 to 1988 and when the unit was doing a prestigious research work of developing a process for making stiff, thick and hard water proof board by using completely waste banana stem, the workers stopped attending the work from 11.01.1988 and when enquiry was made for their non attendance, it was informed that they wanted regular work without break and unless and until their such demand would be fulfilled, they would not join the work.

It is further pleaded by Party No. 1 that six of the daily wages workers lodged complaint with the ALC and worker Shankar Rao Ingle approached the Labour Court, Nagpur and a written statement was filed by KVIC raising the question of jurisdiction and the said case continued till 1991 without adjudication and there was a joint discussion on 18.01.1991, between the six workers, who had made complaint to ALC and the in charge of the unit at Wardha and it was informed to the ALC that under Production Marketing and Training Programme of KVIC, the unit would start functioning from 01.02.1991, where all the six workers could be engaged on daily wages, as such, the ALC closed the case with the instruction to inform him about the appointment and appointment letters dated 28.01.1991 were issued to the said six workers including

Shankar Rao Ingle, directing them to join work and out of them, five workers joined their duties and the appointment of Shankar Rao Ingle was made with the condition of withdrawal of the case filed by him, but Shankar Rao Ingle neither withdrew the case nor joined work and one of the conditions of the appointment of the rest five workers was that they would enter into an agreement with its management and the finalization of the agreement took a long time and on 19.11.1993, a meeting was held with all the workers and in the presence of the then Director, Regional Office, KVIC, Wardha, the workers were requested to enter into the agreement, which was at par with another unit of Handmade Paper at Pune and the workers requested for two to three days time to give their consent, however, on 22.11.1993, the workers sent a letter informing their unwillingness to work on contract basis and that they would work only on daily wages basis and it was surprised to note that when the workers were provided work on daily wages basis in 1988, they demanded continuous work and when they were offered continuous work under Production Marketing and Training Programme in 1991, they refused to enter into an agreement and to work on contract basis, refusing to adhere to the condition of appointment and the workers could not be continued due to their refusal to enter into the agreement and their discontinuance from work was on their own accord and workers had stalled the Research Programme in 1988 and the unit had to remain close till 1991.

Party No. 1 has further pleaded that five workers approached the ALC (Central), Nagpur vide their complaint dated 22.11.1993, complaining that they were illegally terminated and the conciliation proceedings ended in failure and on submission of the failure reports by the ALC (Central), Nagpur, the Central Government refused to refer the cases of the said five workers for adjudication, by order dated 20.01.1995.

The further case of the Party No. 1 is that in the meantime, in the complaints filed by the workers in the Labour Court, Nagpur interim order was passed on 31.05.1994 directing it to reinstate the complainants and it filed revision before the Industrial Court against the order dated 31.05.1994 and on 17.08.1994, by way of pursis, the workers gave the undertaking before the Industrial Court not to proceed with the complaint filed before the Labour Court and in view of the withdrawal of the complaint by the workers, it also withdrew the revision from the Industrial Court on 10.04.1995 and on the basis of the orders of the Ministry, the Directorate of Handmade Paper Industry, Central Office at Mumbai moved a note to the commission to close down the production and Marketing activities of the unit and subsequently, the commission in its 449th meeting dated 20.12.1995 decided to close down the activities and retrench all daily wage workers and on the basis of the commission’s decision, all workers were served with the retrenchment notice alongwith the

retrenchment compensation on 09.02.1996 and some workers, who had left the work as far back as 1993 were also given the retrenchment benefit.

The specific case of the Party No. 1 is that the workman was not in its employment since 10.04.1984 and she did not work continuously since the date of her appointment and she worked intermittently on daily wages, as and when work was available and as the workers denied to enter into an agreement, the production activities were stopped and presently, it is engaged only in providing Artisan training and in the year 1993, there were only two permanent Handmade Paper staff and four JBCRI staff and at present, there are only one Handmade Paper staff and three permanent JBCRI staff and the unit at Wardha had to be closed from 11.01.1988 to 1991, as the daily wage workers left the work and the unit again started functioning from 01.02.1991 and at that time, the workman and other workers were given appointment letters with conditions that they have to enter into an agreement and the claim of the workman that she had put in continuous service of 240 days is false and the workman did not join the work as per the appointment letter dated 31.01.1991 and as such, question of not allowing her to join work does not arise and the workman is not entitled to any relief.

4. In the rejoinder, the workman has denied the allegations made in the written statement and reiterated the facts mentioned in the statement of claim. It is further pleaded by the workman in the rejoinder that she was orally terminated w.e.f. 22.11.1993 and due to the intervention of the ALC, the workers were again allowed to resume their duties and thereafter, the workers demanded for their legitimate rights including payment of wages applicable to them and Party No. 1 with malafide intention decided to stop the work, instead of implementing the statutory law and she was provided with work from 1st February, 1991 as per the order issued to the workers including herself individually and she worked continuously till 22.11.1993 and she was orally terminated from services w.e.f. 22.11.1993, without service of one month's notice or payment of one month's pay in lieu of notice or retrenchment compensation and her oral termination is illegal, improper and contrary to law.

5. It is to be mentioned here that this reference alongwith references No. 160 to 167, 169 to 172 and 174 to 178 of 2002 had been disposed of by this Tribunal by a common award dated 27.03.2007, directing the reinstatement of the workman and other petitioners. Being aggrieved by the said award, the Party No. 1 approached the Hon'ble High Court, Nagpur Bench in Writ Petition No. 4503/2007 and the Hon'ble High Court by order dated 25.08.2008 have been pleased to pass the following orders:-

“In view of the above, the impugned award dated 27.03.2007 passed by the Industrial Tribunal –cum-Labour Court, Nagpur in case Nos. 160/2002 to

167/2002 and 169/2002 to 178/2002 is quashed and set aside. The Tribunal is directed to allow the parties to lead further evidence, if they so desire and decided the cases thereafter. The Tribunal is directed to decide the reference in case Nos. 174/2002 to 178/2002 by common or separate awards as he deems fit and proper on the basis of the evidence led by the parties.”

According to the direction of the Hon'ble High Court, the parties were given the chance of leading further evidence.

The workman, who had examined herself as a witness in support of her case did not adduce further evidence.

However, the Party No. 1 examined two witnesses, namely, Khandeswar Pralhad Gondane and Milind Wakode and produced documentary evidence in support of its case, besides the evidence already adduced.

6. The workman in her evidence on affidavit has reiterated the facts mentioned in the statement of claim and rejoinder. The workman in her cross-examination has stated that she worked continuously from 1986 to November, 1993. She has denied the suggestion that she did not work for 240 days in any calendar year.

7. The first witness for Party No. 1 is Amitabh Datta, an Asstt. Director of Party No. 1. The evidence of witness, Amitabh is on affidavit. In his examination in chief on affidavit, in paragraph 8, this witness has stated that, “the party No. 2 was given appointment vide letter 23.09.1991 on temporary basis. The appointment was for a fixed period until 31.12.1991, that party No. 2 however did not join the work.” In paragraph 11 of his affidavit this witness has stated that, “However the unit was again started from 01.02.1991 and the Party No. 2 were served appointment letter dated 28.01.1991 to join, with conditions that they have to enter into an agreement. That when in 1993 the workers including Party No. 2 was asked to sign the agreement. Instead of signing the agreement the workers including Party No. 2 sent letter dated 22.11.1993 informing that they are not ready to work on contract basis and will work on daily wages. That in absence of entering into the agreement which was the condition of appointment the workers could not be given work and they did not work after 22.11.1993. It is denied that party No. 2 was reinstated in service from August, 1994 to Jan. 1998. It is denied that the retrenchment dated 9.2.1996 was illegal, on the contrary though the Party No. 2 had not worked after 22.11.1993, nor was entitled to, he was given the benefits alongwith other workers. The retrenchment notice alongwith the compensation was sent to all the workers including the Party No. 2.”

In his cross-examination, this witness has stated that he was posted at Wardha from 1984 to 1995 and he knows the workman and the workman was working from 1985 at Wardha. In his cross-examination, this witness

has categorically admitted that the workman had worked continuously from 1991 to 1993.

8. The witness no.2 examined by Party No. 1 is Khandeswar Pralhad Gondane. The examination-in-chief on affidavit of this witness is in the line of the stands taken by the Party No. 1 in the written statement. In paragraph 3 of his affidavit, this witness has stated that, “party no. 2 as well as other employees were never in continuous employment with Party No. 1. They had not completed 240 days with Party No.1. Despite this, they were offered with closure compensation alongwith all other legal dues.” Demolishing his own evidence given in the examination-in-chief, in his cross-examination, this witness has stated that he is working with Handmade Paper from 17.07.1992 and the workman was working with Handmade Paper prior to his joining in service and he was also working even after his joining service in 1992. This witness has categorically admitted that the workman worked for more than 240 days in every calendar year.

9. The third witness for Party No. 1 is Milind Wakode, the Divisional Director, Nagpur. In his examination-in-chief on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. This witness has further stated that the Handmade Paper Unit at Wardha had been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995 and retrenchment notice alongwith compensation was sent to all the workers by letter dated 09/10.02.1996. This witness has also proved the office copy of the termination order as Ext. M-II.

In his cross-examination, this witness has stated that Ext. M-II is dated 09.02.1996 and he cannot say the exact date of termination of the workman and Ext. M-III is the office copy of the order dated 31.01.1991 and Ext.M-III was issued after the engagement of the workman by the management and as per condition No.7 of Ext. M-III, the workman was to execute an agreement as prescribed by the office of Handmade Paper, Khadi Board, Pune and as the workman did not agree to execute any agreement, he was not provided with work or made permanent and the workman was engaged as labourer on daily wages and he does not have any idea as to how the retrenchment compensation paid to the workman was calculated and as per Ext. M-II, retrenchment compensation was paid to the workman for 3 years i.e. for 45 days.

10. At the time of argument, it was submitted by the learned advocate for the workman that the workman was working with the Party No. 1 as an unskilled labourer w.e.f. 10.04.1984 and from the date of her initial appointment, the workman worked continuously and she had completed more than 240 days of work in each calendar year and from the date of completion of 240 days of work, the workman was entitled for regularization in service, but her services were not regularized and the workman was compelled to

sign an illegal agreement and when she did not agree to sign the same, she was not allowed to join service from 22.11.1993 and such termination of the workman was without compliance of the mandatory provisions of Section 25-F of the Act and the termination amounts to retrenchment and the termination of the workman is illegal, arbitrary, malafide and contrary to the principles of natural justice and payment of retrenchment compensation in 1996 cannot cure such illegality and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1964 II LLJ-271 [Ambalal Shivlal Vs Vin (D.M.) and Others], 1969 II LLJ-373 (Sivanandam Vs. Press Superintendent, S. Railway, Madras), 1979 I LLJ-168 (B.M. Gupta Vs. State of West Bengal), 1960 I LLJ – 251 (S.C.) (State of Bombay Vs. Hospital Mazdoor Sabha) and 1964 I LLJ – 333 (S.C.) (Workmen of Subong Tea Estate Vs. Subong Tea Estate).

11. On the other hand, it was submitted by the learned advocate for the Party No. 1 that the terms of the reference is vague and not specific and though, the reference is for adjudication of the legality or otherwise of the termination of the services of the workman, the alleged dated of such termination has not been mentioned in the schedule of reference and the date of the alleged termination is very crucial, in absence of which it is not possible for effective adjudication of the dispute and on that score, the reference is not maintainable. It was also submitted by the learned advocate for the Party No. 1 that in the statement of claim filed by the workman also, there is no specific pleading as to when her services were terminated and on that count also, the reference is to be answered in the negative.

It was further submitted by the learned advocate for the Party No. 1 that though the workman was offered engagement on daily wages basis as per office order dated 31.01.1991, she did not join duty and as such, there is no question of termination of the services of the workman and even for the sake of argument, it is held that the workman worked as per office order dated 31.01.1991 on daily wages, the workman has not adduced any legal evidence on record to show that she had worked for 240 days in the preceding 12 months of the date of termination and the onus to prove such fact is on the workman, but she failed to discharge the onus by adducing necessary evidence and as such, she is not entitled for the benefits of the provisions of Section 25-F of the Act and as per the decision of the commissioner, the production activities of the unit was closed down and even though, the workman did not work after 1988, notice pay and retrenchment compensation was sent to her alongwith the retrenchment notice dated 09.02.1996 and Party No. 1 did not commit any illegality and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the Party No. 1 placed reliance on the decisions reported in the decisions reported in (2002) 3 SCC-25 (Range Forest Officer Vs. S.T. Hadimani), (2004) 8 SCC-195 (Municipal Corporation, Faridabad Vs. Sri Niwas), (2005) 8 SCC-481 (Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh), (2005) 8 SCC-750 (Surendra Nagar District Panchayat vs. Dahyabhai Amarsingh), (2006) 2 SCC-716 (M.P. State Agro Industries Development Corp. Ltd. vs. S.C. Pandey), (2006) 5 SCC-173 (Municipal Council, Sujanpur vs. Surinder Singh), (2006) 9 SCC-697 (Krishna Bhagyajal Nigam Ltd. vs. Mohd. Rafi), (2006) 9 SCC-132 (Surendranagar Distt. Panchayat vs. Ganga Ben Laljibhai), (2006) 9 SCC-124 (Chief Engineer Ranjit Sagar Dam vs. Sham Lal), (2006) 6 SCC-275 (Rajasthan Tourism Development Corporation vs. Intejam Alizafri), (2006) 5 SCC-127 (Nagar Mahapalika vs. State of U.P.), (2006) 1 SCC-106 (R.M. Yellati vs. Asstt. Executive Engineer), (2006) 2 SCC-711 (State of M.P. vs. Arjunlal Rajak), (2007) 13 SCC-343 (Ranip Nagar Palika vs. Babuji Gabhaji Thakore), (2007) 12-172 (State of Maharashtra vs. Dattatraya Digamber Birajdar), 2008 II CLR 1089 (State of Haryana vs. Ramesh Kumar) 9, (2008) 3 SCC-474 (BSNL vs. Mahesh Chand), (2008) 5 SCC-171 (Municipal Corporation, Faridabad vs. Durga Prasad) and (2009) 17 SCC-326 (Ajnala Cooperative Sugar Mills Ltd. vs. Sukhraj Singh).

It is settled beyond doubt by the Hon'ble Apex Court in different judgments including the judgments cited by the learned advocate for the Party No.1 that where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it is for the claimant to lead evidence to that effect and the workman's affidavit is not sufficient evidence for that purpose.

Keeping in view the principles as mentioned above, now, the present case at hand is to be considered.

12. So far the first contention raised by the learned advocate for the Party No.1 regarding the non-mention of the date of termination of the workman from services in the schedule of reference and in the statement of claim is concerned, admittedly, the alleged date of termination of the workman has not been mentioned in the schedule of reference. However, in the statement of claim, in paragraph 4, it has been mentioned by the workman that, "Immediately after the receipt of the notice dated 18.11.1993, the Party No.1 had not allowed the Party No.2 and his co-workers, who had issued notice to Party No.1, to resume duty w.e.f. 20.11.1993." In paragraph 05 of the statement of claim, it has been mentioned that, "The Party No.2 had approached the Party No.1 on 21.11.1993 and subsequently on 22.01.1993, but work was not provided."

In the rejoinder, the workman has specifically in paragraphs 1 and 2 has pleaded that she was orally terminated from services w.e.f. 22.11.1993. From the

materials on record, it is found that for non-mention of the date of the termination of the workman in the schedule of reference, it cannot be said that the reference is not maintainable. Hence I find no force in the contention raised by the learned advocate for the Party No.1 in that regard.

13. To prove that she had worked for 240 days in the preceding 12 months of the date of termination, the workman has given her own evidence on affidavit. Though, the workman has not produced any other evidence in support of her such claim, her evidence has been corroborated by the evidence of the witnesses no.1 and 2 of the Party No. 1. As already mentioned above, Amitabh Datta, the witness No.1 for Party No.1 has stated that the workman worked continuously from 1991 to 1993. Khandeswar Pralhad Gondane, witness No.2 for the Party No.1 has stated that the workman worked for more than 240 days in every calendar year.

14. Apart from the oral evidence, the documentary evidence produced by the Party No.1 clinches the issue in favour of the workman. The Party No.1 has produced and proved the notice of retrenchment dated 09/12.02.1996 issued to the workman as Ext. M-II. In Ext. M-II, it has been mentioned that the workman joined in February, 1991 and worked from February, 1991 to November, 1993 and she is entitled for retrenchment compensation for three years i.e. for 45 days at the rate of 15 days per year. So, it is clear from the materials on record that the workman infact had worked for more than 240 days in the preceding 12 calendar months of the date of his termination i.e. 22.11.1993. It is also found from the materials on record that before the termination of the workman from services, the mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to her. So, the termination of the workman from services amounts to retrenchment and such termination is illegal.

Applying the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocate for the workman to the case in hand, it is found that the issuance of the retrenchment notice as per Ext. M-II and sending of the demand draft towards retrenchment compensation and one month's wages on 09/10.02.1996 does not cure the illegality of termination of the services of the workman w.e.f. 22.11.1993.

15. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh) have been pleased to take into consideration a large number of decisions delivered

by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal Council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (In charge Officer Vs. Shankar Setty.) and have been pleased to hold that:-

"In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager in 1991, about 23 years back. It is also found that he continued as such till 22.11.1993, when he was terminated from services by party no.1. It is also found that production and marketing activities of the handmade paper unit, Wardha has been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 75,000 (Rupees Seventy Five thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Smt. Premila Maroti More is illegal and unjustified. The workman is entitled for monetary compensation of Rs.75,000 (Rupees Seventy Five thousand only) in lieu of reinstatement. She is not entitled for any other relief. The Party no.1 is directed to pay the monetary compensation of Rs. 75,000 to the workman, Smt. Premila Maroti More within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 percent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1187.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर हैंडमेड पेपर प्रोडक्शन खादी और विलेज इंडस्ट्रीज कमीशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/172/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था।

[सं. एल-42012/42/95-आईआर(डीयू)]
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March , 2014

S.O. 1187.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/ NGP/172/2002) of the Cent. Govt. Indus. Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Director, Handmade Paper Production Khadi & Village Industrial Commission and their workmen, which was received by the Central Government on 24-03-2014.

[No. L-42012/42/95-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/172/2002 Date: 03.03.2014

Party No. 1 : The Director,
Handmade Paper Production
Marketing and Training Centre,
Khadi & Village Industries
Commission,
Wardha-442001

Versus

Party No. 2 : Smt. Sunil Sureshrao Rewatkar,
R/o Ramnagar, Ward No. 27,
Wardha-442001

AWARD

(Dated: 3rd March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Handmade Paper Production and Training Centre and their workman, Shri Sunil Sureshrao Rewatkar,

for adjudication, as per letter No. L-42012/42/95-IR(DU) dated 27.03.1996, with the following schedule:-

“Whether the action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Sunil Sureshrao Rewatkar was proper, justified and legal? If not, to what relief the workman is entitled to?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Sunil Sureshrao Rewatkar, (‘the workman’ in short), filed the statement of claim and the management of Handmade Paper Production and Training Centre (“Party No. 1” in short) filed their written statement.

The case of the workman as presented in the statement of claim is that Party No. 1 is a Central Government undertaking and is engaged in manufacturing and production of Handmade Papers and in the factory of Party No. 1 at Wardha, about 250 permanent employees were working and he was employed by Party No. 1 as a skilled worker on 01.05.1985 and worked continuously and he was being paid @ Rs. 800/- per month and though he himself and 17 other workers engaged by Party No. 1 worked with Party No. 1 for several years, they were continued as temporary workers.

The further case of the workman is that since the date of his appointment, he worked continuously without any gap and he had put in 240 days of attendance in every year of service, but he was not made permanent in service and even though, he was doing the same work as done by the permanent workers, neither he was paid wages at par with the permanent employees nor given the benefits of bonus, E.S.I. Schemes and Provident Fund Scheme etc and as Party No. 1 did not issue the attendance-cum-Wage Card to him and the other 17 temporary workers, on 18.11.1993, all of them issued a notice through an advocate to Party No. 1 to make them permanent and to give them all other benefits of permanent employees and soon after the receipt of the said notice, Party No. 1 did not allow him and other temporary workers to resume duty w.e.f. 20.11.1993 and he was informed by Party No. 1 through Shri A. Datta that he would be allowed to resume duty in case of his consenting to work under the Contractor, but he refused the offer, as because, he had already worked with Party No. 1 for years together and was entitled to be made permanent in service as per the representation dated 18.11.1993 and though he approached Party No. 1 on 21.11.1993 and 22.11.1993, he was not provided with work, so he alongwith the other 17 temporary workers on 22.11.1993 issued another notice, but inspite of the same, no work was provided to them, so they issued another

notice through the advocate on 27.11.1993, but Party No. 1 neither replied to the notice nor provided him any work and thereafter also, he continuously approached and requested the Party No. 1 to provide him work, but Party No. 1 did not pay any heed to his request and after waiting for a long time, he approached the Labour Court, Nagpur by filing U.L.P.A. Complaint No. 766 of 1993 and the Labour Court vide its interim order, directed Party No. 1 to reinstate him in service, but no work was provided to him by Party No. 1 and Party No. 1 moved a revision application before the Industrial Court, Nagpur, against the order of the Labour Court raising objection of the Labour Court of having no jurisdiction to entertain and decide the matter pertaining to the establishment of the Central Government.

The further case of the workman is that out of the rest 17 retrenched workers, five workers approached the Asstt. Labour Commissioner (Central), Nagpur (“the ALC” in short) and the said five workers were provided with work by Party No. 1, so he withdrew the case filed by him in the Labour Court, Nagpur and approached the ALC by filing an application under Section 2-A of the Act and the five workers, who had been provided work by Party No. 1 after their approaching the ALC were juniors to him and the ALC issued notice to Party No. 1 and Party No. 1 did not agree for any amicable settlement, so there was failure of the conciliation proceedings and the ALC submitted the failure report to the Central Government.

It is also pleaded by the workman that Party No. 1 had issued experience certificate in his favour and before terminating his services, Party No. 1 neither issued one month’s notice nor paid notice pay in lieu of the notice or retrenchment compensation as provided under Section 25-F of the Act and therefore, his removal/retrenchment from services is illegal, improper and contrary to law and he is entitled for reinstatement in services with full back wages alongwith all monetary benefits of permanent employee, from the date of joining the service of Party No. 1 till the date of actual reinstatement and work is still available with Party No. 1 and Party No. 1 engaged new persons on less wages for more production.

3. The Party No. 1 in the written statement has pleaded inter-alia that it does not have any Managing Director, but only a Director of Handmade Paper Industry, which runs under Khadi and Village Industries Commission (“KVIC” in short) and KVIC is a statutory body, which was created by the statute, “Khadi & Village Industries commission Act, 1956” and KVIC is functioning under the Ministry of Industry, Government of India and to achieve the object entrusted to KVIC, several Research and Training Centers were established including the J.B. Research Institute at Wardha, to provide artisan training courses for Handmade Paper Industries, but the unit so established at Wardha was handed over to a local

institution, namely, "Khadi Gramodhyog Sangh, Manganwadi, Wardha, for the purpose of continuing the production activities and in 1984, the management of the said unit was taken over by it and it was decided to use the said unit as a demonstration-cum-extension Centre, for conducting experiments and testing etc. and arranging training of skilled workers and two technical persons were posted to look after the work and the unit finally started its Science & Technology (Research) work and for that some workers were engaged on daily wages, from November, 1984 and the work involved were of research and training and therefore not a continuous work and the workers were engaged as per requirements of work and after completion of the work, they were discontinued and none of the workers was engaged on continuous basis and the said unit functioned from 1984 to 1988 and when the unit was doing a prestigious research work of developing a process for making stiff, thick and hard water proof board by using completely waste banana stem, the workers stopped attending the work from 11.01.1988 and when enquiry was made for their non attendance, it was informed that they wanted regular work without break and unless and until their such demand would be fulfilled, they would not join the work.

It is further pleaded by Party No. 1 that six of the daily wages workers lodged complaint with the ALC and worker Shankar Rao Ingle approached the Labour court, Nagpur and a written statement was filed by KVIC raising the question of jurisdiction and the said case continued till 1991 without adjudication and there was a joint discussion on 18.01.1991 between the six workers, who had made complaint to ALC and the in charge of the unit at Wardha and it was informed to the ALC that under Production Marketing and Training Programme of KVIC, the unit would start functioning from 01.02.1991, where all the six workers could be engaged on daily wages, as such, the ALC closed the case with the instruction to inform him about the appointment and appointment letters dated 28.01.1991 were issued to the said six workers including Shankar Rao Ingle, directing them to join work and out of them, five workers joined their duties and the appointment of Shankar Rao Ingle was made with the condition of withdrawal of the case filed by him, but Shankar Rao Ingle neither withdrew the case nor joined work and one of the conditions of appointment of the rest five workers was that they would enter into an agreement with its management and the finalization of the agreement took a long time and on 19.11.1993, a meeting was held with all the workers and in the presence of the then Director, Regional Office, KVIC, Wardha, the workers were requested to enter into the agreement, which was at par with another unit of Handmade Paper at Pune and the workers requested for two to three days time to give their consent, however, on 22.11.1993, the workers sent a letter informing their unwillingness to work on contract basis

and that they would work only on daily wages basis and it was surprised to note that when the workers were provided work on daily wages basis in 1988, they demanded continuous work and when they were offered continuous work under Production Marketing and Training Programme in 1991, they refused to enter into an agreement and to work on contract basis, refusing to adhere to the condition of appointment and the workers could not be continued due to their refusal to enter into the agreement and their discontinuance from work was on their own accord and workers had stalled the Research Programme in 1988 and the unit had to remain close till 1991.

Party No. 1 has further pleaded that five workers approached the ALC (Central), Nagpur vide their complaint dated 22.11.1993, complaining that they were illegally terminated and the conciliation proceedings ended in failure and on submission of the failure reports by the ALC (Central), Nagpur, the Central Government refused to refer the cases of the said five workers for adjudication, by order dated 20.01.1995.

The further case of the Party No. 1 is that in the meantime, in the complaints filed by the workers in the Labour Court, Nagpur interim order was passed on 31.05.1994 directing it to reinstate the complainants and it filed revision before the Industrial Court against the order dated 31.05.1994 and on 17.08.1994, by way of pursis, the workers gave the undertaking before the Industrial Court not to proceed with the complaint filed before the Labour Court and in view of the withdrawal of the complaint by the workers, it also withdrew the revision from the Industrial Court on 10.04.1995 and on the basis of the orders of the Ministry, the Directorate of Handmade Paper Industry, Central Office at Mumbai moved a note to the commission to close down the production and Marketing activities of the unit and subsequently, the commission in its 449th meeting dated 20.12.1995 decided to close down the activities and retrench all daily wage workers and on the basis of the commission's decision, all workers were served with the retrenchment notice alongwith the retrenchment compensation on 09.02.1996 and some workers, who had left the work as far back as 1993 were also given the retrenchment benefit.

The specific case of the Party No. 1 is that the workman was not in its employment since 01.05.1985 and he did not work continuously since the date of his appointment and he worked intermittently on daily wages, as and when work was available and as the workers denied to enter into an agreement, the production activities were stopped and presently, it is engaged only in providing Artisan training and in the year 1993, there were only two permanent Handmade Paper staff and four JBCRI staff and at present, there are only one Handmade Paper staff and three permanent JBCRI staff and the unit at Wardha had to be closed from 11.01.1988 to 1991, as the daily wage

workers left the work and the unit again started functioning from 01.02.1991 and at that time, the workman and other workers were given appointment letters with conditions that they have to enter into an agreement and the claim of the workman that he had put in continuous service of 240 days is false and the workman did not join the work as per the appointment letter dated 31.01.1991 and as such, question of not allowing him to join work does not arise and the workman is not entitled to any relief.

4. In the rejoinder, the workman has denied the allegations made in the written statement and reiterated the facts mentioned in the statement of claim. It is further pleaded by the workman in the rejoinder that he was orally terminated w.e.f. 22.11.1993 and due to the intervention of the ALC, the workers were again allowed to resume their duties and thereafter, the workers demanded for their legitimate rights including payment of wages applicable to them and Party No. 1 with malafide intension decided to stop the work, instead of implementing the statutory law and he was provided with work from 1st, February, 1991 as per the order issued to the workers including himself individually and he worked continuously till 22.11.1993 and he was orally terminated from services w.e.f. 22.11.1993, without service of one month's notice or payment of one month's pay in lieu of notice or retrenchment compensation and his oral termination is illegal, improper and contrary to law.

5. It is to be mentioned here that this reference alongwith references No. 160 to 167, 169 to 171 and 173 to 178 of 2002 had been disposed of by this Tribunal by a common award dated 27.03.2007, directing the reinstatement of the workman and other petitioners. Being aggrieved by the said award, the Party No. 1 approached the Hon'ble High Court, Nagpur Bench in Writ Petition No. 4503/2007 and the Hon'ble High Court by order dated 25.08.2008 have been pleased to pass the following orders:-

“In view of the above, the impugned award dated 27.03.2007 passed by the Industrial Tribunal –cum–Labour Court, Nagpur in case Nos. 160/2002 to 167/2002 and 169/2002 to 178/2002 is quashed and set aside. The Tribunal is directed to allow the parties to lead further evidence, if they so desire and decided the cases thereafter. The Tribunal is directed to decide the reference in case Nos. 174/2002 to 178/2002 by common or separate awards as he deems fit and proper on the basis of the evidence led by the parties.”

According to the direction of the Hon'ble High Court, the parties were given the chance of leading further evidence.

The workman, who had examined himself as a witness in support of his case did not adduce further evidence.

However, the Party No. 1 examined two witnesses, namely, Khandeswar Pralhad Gondane and Milind Wakode and produced documentary evidence in support of its case, besides the evidence already adduced.

6. The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim and rejoinder. The workman in his cross-examination has stated that he worked continuously from 1985 to November, 1993. He has denied the suggestion that he did not work for 240 days in any calendar year. The workman in his cross-examination has further stated that on 09.02.1996, one registered letter, M-2 was sent to him, but he returned the same. The workman has admitted that the factory was closed from 1988 to 1991 and he did not work from January, 1988.

7. The first witness for Party No. 1 is Amitabh Datta, an Asstt. Director of Party No. 1. The evidence of witness, Amitabh is on affidavit. In his examination in chief on affidavit, in paragraph 8, this witness has stated that, “the party No.2 was given appointment vide letter 23.09.1991 on temporary basis. The appointment was for a fixed period until 31.12.1991, that party No.2 however did not join the work.” In paragraph 11 of his affidavit this witness has stated that, “However the unit was again started from 01.02.1991 and the Party No. 2 were served appointment letter dated 28.01.1991 to join, with conditions that they have to enter into an agreement. That when in 1993 the workers including Party No. 2 was asked to sign the agreement. Instead of signing the agreement the workers including Party No. 2 sent letter dated 22.11.1993 informing that they are not ready to work on contract basis and will work on daily wages. That in absence of entering into the agreement which was the condition of appointment the workers could not be given work and they did not work after 22.11.1993. It is denied that party No.2 was reinstated in service from August,94 to Jan. 1998. It is denied that the retrenchment dated 9.2.1996 was illegal, on the contrary though the Party No. 2 had not worked after 22.11.1993, nor was entitled to, he was given the benefits alongwith other workers. The retrenchment notice alongwith the compensation was sent to all the workers including the Party No. 2.”

In his cross-examination, this witness has stated that he was posted at Wardha from 1984 to 1995 and he knows the workman and the workman was working from 1985 at Wardha. In his cross-examination, this witness has categorically admitted that the workman had worked continuously from 1991 to 1993.

8. The witness No. 2 examined by Party No. 1 is Khandeswar Pralhad Gondane. The examination-in-chief on affidavit of this witness is in the line of the stands taken by the Party No. 1 in the written statement. In paragraph 3 of his affidavit, this witness has stated that, “party No. 2 as well as other employees were never in

continuous employment with Party No. 1. They had not completed 240 days with Party No.1. Despite this, they were offered with closure compensation alongwith all other legal dues.” Demolishing his own evidence given in the examination-in-chief, in his cross-examination, this witness has stated that he is working with Handmade Paper from 17.07.1992 and the workman was working with Handmade Paper prior to his joining in service and he was also working even after his joining service in 1992. This witness has categorically admitted that the workman worked for more than 240 days in every calendar year.

9. The third witness for Party No. 1 is Milind Wakode, the Divisional Director, Nagpur. In his examination-in-chief on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. This witness has further stated that the Handmade Paper Unit at Wardha had been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995 and retrenchment notice alongwith compensation was sent to all the workers by letter dated 09/10.02.1996. This witness has also proved the office copy of the termination order as Ext. M-II.

In his cross-examination, this witness has stated that Ext. M-II is dated 09.02.1996 and he cannot say the exact date of termination of the workman and Ext. M-III is the office copy of the order dated 31.01.1991 and Ext.M-III was issued after the engagement of the workman by the management and as per condition No.7 of Ext. M-III, the workman was to execute an agreement as prescribed by the office of Handmade Paper, Khadi Board, Pune and as the workman did not agree to execute any agreement, he was not provided with work or made permanent and the workman was engaged as labourer on daily wages and he does not have any idea as to how the retrenchment compensation paid to the workman was calculated and as per Ext. M-II, retrenchment compensation was paid to the workman for 3 years i.e. for 45 days.

10. At the time of argument, it was submitted by the learned advocate for the workman that the workman was working with the Party No. 1 as a skilled labourer w.e.f. 01.05.1985 and from the date of his initial appointment, the workman worked continuously and he had completed more than 240 days of work in each calendar year and from the date of completion of 240 days of work, the workman was entitled for regularization in service, but his services were not regularized and the workman was compelled to sign an illegal agreement and when he did not agree to sign the same, he was not allowed to join service from 22.11.1993 and such termination of the workman was without compliance of the mandatory provisions of Section 25-F of the Act and the termination amounts to retrenchment and the termination of the workman is illegal, arbitrary, malafide and contrary to the principles of natural justice and payment of retrenchment compensation in 1996

cannot cure such illegality and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1964 II LLJ-271 (Ambalal Shivlal Vs. Vin (D.M.) and others), 1969 II LLJ-373 (Sivanandam Vs. Press Superintendent, S. Railway, Madras), 1979 I LLJ-168 (B.M. Gupta Vs. State of West Bengal), 1960 I LLJ – 251 (S.C.) (State of Bombay Vs. Hospital Mazdoor Sabha) and 1964 I LLJ – 333 (S.C.) (Workmen of Subong Tea Estate Vs. Subong Tea Estate).

11. On the other hand, it was submitted by the learned advocate for the Party No. 1 that the terms of the reference is vague and not specific and though, the reference is for adjudication of the legality or otherwise of the termination of the services of the workman, the alleged dated of such termination has not been mentioned in the schedule of reference and the date of the alleged termination is very crucial, in absence of which it is not possible for effective adjudication of the dispute and on that score, the reference is not maintainable. It was also submitted by the learned advocate for the Party No. 1 that in the statement of claim filed by the workman also, there is no specific pleading as to when his services were terminated and on that count also, the reference is to be answered in the negative.

It was further submitted by the learned advocate for the Party No. 1 that though the workman was offered engagement on daily wages basis as per office order dated 31.01.1991, he did not join duty and as such, there is no question of termination of the services of the workman and even for the sake of argument, it is held that the workman worked as per office order dated 31.01.1991 on daily wages, the workman has not adduced any legal evidence on record to show that he had worked for 240 days in the preceding 12 months of the date of termination and the onus to prove such fact is on the workman, but he failed to discharge the onus by adducing necessary evidence and as such, he is not entitled for the benefits of the provisions of Section 25-F of the Act and as per the decision of the commissioner, the production activities of the unit was closed down and even though, the workman did not work after 1988, notice pay and retrenchment compensation was sent to him alongwith the retrenchment notice dated 09.02.1996 and Party No. 1 did not commit any illegality and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the Party No. 1 placed reliance on the decisions reported in the decisions reported in (2002) 3 SCC-25 (Range Forest Officer Vs. S.T. Hadimani), (2004) 8 SCC-195 (Municipal Corporation, Faridabad Vs. Siri Niwas), (2005) 8 SCC-481 (Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh), (2005) 8 SCC-750 (Surendra Nagar District Panchayat Vs.

Dahyabhai Amarsingh), (2006) 2 SCC-716 (M.P. State Agro Industries Development Corp. Ltd. Vs. S.C. pandey), (2006) 5 SCC-173 (Municipal Council, Sujanpur Vs. Surinder Singh), (2006) 9 SCC-697 (Krishna Bhagyajal Nigam Ltd. Vs. Mohd. Rafi), (2006) 9 SCC-132 (Surendranagar Distt. Panchayat Vs. Ganga Ben Laljibhai), (2006) 9 SCC-124 Chief Engineer Ranjit Sagar Dam Vs. Sham Lal), (2006) 6 SCC-275 (Rajasthan Tourism Development Corporation Vs. Intejam Alizafri), (2006) 5 SCC-127 (Nagar Mahapalika Vs. State of U.P.), (2006) 1 SCC-106 (R.M. Yellati Vs. Asstt. Executive Engineer), (2006) 2 SCC-711 (State of M.P. Vs. Arjunlal Rajak), (2007) 13 SCC-343 (Ranip Nagar Palika Vs. Babuji Gabhaji Thakore), (2007) 12-172 (State of Maharashtra Vs. Dattatraya Digamber Birajdar), 2008 II CLR 1089 (State of Haryana Vs. Ramesh Kumar), (2008) 3 SCC-474 (BSNL Vs. Mahesh Chand), (2008) 5 SCC-171 (Municipal Corporation, Faridabad Vs. Durga Prasad) and (2009) 17 SCC-326 (Ajnala Co-operative Sugar Mills Ltd. Vs. Sukhraj Singh).

It is settled beyond doubt by the Hon'ble Apex Court in different judgments including the judgments cited by the learned advocate for the party No.1 that where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it is for the claimant to lead evidence to that effect and the workman's affidavit is not sufficient evidence for that purpose.

Keeping in view the principles as mentioned above, now, the present case at hand is to be considered.

12. So far the first contention raised by the learned advocate for the party No.1 regarding the non-mention of the date of termination of the workman from services in the schedule of reference and in the statement of claim is concerned, admittedly, the alleged date of termination of the workman has not been mentioned in the schedule of reference. However, in the statement of claim, in paragraph 4, it has been mentioned by the workman that, "Immediately after the receipt of the notice dated 18.11.1993, the party No.1 had not allowed the party No.2 and his co-workers, who had issued notice to party No.1, to resume duty w.e.f. 20.11.1993." In paragraph 05 of the statement of claim, it has been mentioned that, "The party No.2 had approached the party No.1 on 21.11.1993 and subsequently on 22.01.1993, but work was not provided."

In the rejoinder, the workman has specifically in paragraphs 1 and 2 has pleaded that he was orally terminated from services w.e.f. 22.11.1993. From the materials on record, it is found that for non-mention of the date of the termination of the workman in the schedule of reference, it cannot be said that the reference is not maintainable. Hence I do not find any force in the contention raised by the learned advocate for the Party No. 1 in that regard.

13. To prove that he had worked for 240 days in the preceding 12 months of the date of termination, the workman has given his own evidence on affidavit. Though, the workman has not produced any other evidence in support of his such claim, his evidence has been corroborated by the evidence of the witnesses no.1 and 2 of the party No.1. As already mentioned above, Amitabh Datta, the witness No.1 for party No.1 has stated that the workman worked continuously from 1991 to 1993. Khandeswar Pralhad Gondane, witness No.2 for the party No.1 has stated that the workman worked for more than 240 days in every calendar year.

14. Apart from the oral evidence, the documentary evidence produced by the party No.1 clinches the issue in favour of the workman. The party No.1 has produced and proved the notice of retrenchment dated 09/12.02.1996 issued to the workman as Ext. M-II. In Ext. M-II, it has been mentioned that the workman joined in February, 1991 and worked from February, 1991 to November, 1993 and he is entitled for retrenchment compensation for three years i.e. for 45 days at the rate of 15 days per year. So, it is clear from the materials on record that the workman infact had worked for more than 240 days in the preceding 12 calendar months of the date of his termination i.e. 22.11.1993. It is also found from the material on record that before the termination of the workman from services, the mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him. So, the termination of the workman from services amounts to retrenchment and such termination is illegal.

Applying the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocate for the workman to the case in hand, it is found that the issuance of the retrenchment notice as per Ext. M-II and sending of the demand draft towards retrenchment compensation and one month's wages on 09/10.02.1996 does not cure the illegality of termination of the services of the workman w.e.f. 22.11.1993.

15. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh) after taking into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (In-charge Officer Vs. Shankar Setty.) have been pleased to hold that:-

"In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager in 1991, about 23 years back. It is also found that he continued as such till 22.11.1993, when he was terminated from services by party No.1. It is also found that production and marketing activities of the handmade paper unit, Wardha has been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 75,000 (Rupees seventy Five thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Sunil Sureshrao Rewatkar is illegal and unjustified. The workman is entitled for monetary compensation of Rs.75,000 (Rupees seventy five thousand only) in lieu of reinstatement. He is not entitled for any other relief. The party No.1 is directed to pay the monetary compensation of Rs. 75,000 to the workman Shri Sunil Sureshrao Rewatkar within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 percent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1188.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर

हैंडमेड पेपर प्रोडक्शन खादी और विलेज इंडस्ट्रीय कमीशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/164/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-42012/29/95-आईआर(डीयू)]
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March , 2014

S.O. 1188.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/NGP/164/2002) of the Cent. Govt. Indus. Tribunal/Labour Court, Nagpur now as shown in the Annexure in the industrial dispute between the employers in relation to the management of Director, Handmade Paper Production Khadi & Village Industrial Commission and their workmen, which was received by the Central Government on 24-03-2014.

[No. L-42012/29/95-IR(DU)]
P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER,

CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/164/2002 Date: 03.03.2014.

Party No. 1 : The Director,
Handmade Paper Production
Marketing and Training Centre,
Khadi & Village Industries
Commission,
Wardha-442001.

Versus

Party No. 2 : Shri Shankar Rao Z. Bhagatsingh,
R/o Segur Bhawan,
Wardha-442001.

AWARD

(Dated: 3rd March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Handmade Paper Production and Training Centre and their workman, Shri Shankar Rao Z. Bhagat

Singh, for adjudication, as per letter No.L-42012/29/95-IR(DU) dated 27.03.1996, with the following schedule:-

“Whether the action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Shankar Rao Z. Bhagat Singh was proper, justified and legal? If not, to what relief the workman is entitled to?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Shankar Rao Z. Bhagat Singh, (“the workman” in short), filed the statement of claim and the management of Handmade Paper Production and Training Centre (“Party No. 1” in short) filed their written statement.

The case of the workman as presented in the statement of claim is that Party No. 1 is a Central Government undertaking and is engaged in manufacturing and production of Handmade Papers and in the factory of Party No. 1 at Wardha, about 250 permanent employees were working and he was employed by Party No. 1 as a skilled worker on 10.04.1984 and worked continuously and he was being paid @ Rs. 800 per month and though he himself and 17 other workers engaged by Party No. 1 worked with Party No. 1 for several years, they were continued as temporary workers.

The further case of the workman is that since the date of his appointment, he worked continuously without any gap and he had put in 240 days of attendance in every year of service, but he was not made permanent in service and even though, he was doing the same work as done by the permanent workers, neither he was paid wages at par with the permanent employees nor given the benefits of bonus, E.S.I. Schemes and Provident Fund Scheme etc and as Party No. 1 did not issue the Attendance-cum-Wage Card to him and the other 17 temporary workers, on 18.11.1993, all of them issued a notice through an advocate to Party No. 1 to make them permanent and to give them all other benefits of permanent employees and soon after the receipt of the said notice, Party No. 1 did not allow him and other temporary workers to resume duty w.e.f. 20.11.1993 and he was informed by Party No. 1 through Shri A. Datta that he would be allowed to resume duty in case of his consenting to work under the Contractor, but he refused the offer, as because, he had already worked with Party No. 1 for years together and was entitled to be made permanent in service as per the representation dated 18.11.1993 and though he approached Party No. 1 on 21.11.1993 and 22.11.1993, he was not provided with work, so he alongwith the other 17 temporary workers on 22.11.1993 issued another notice, but inspite of the same, no work was provided to them, so they issued another notice through the advocate on 27.11.1993, but Party No. 1 neither replied to the notice nor provided him any work

and thereafter also, he continuously approached and requested the Party No. 1 to provide him work, but Party No. 1 did not pay any heed to his request and after waiting for a long time, he approached the Labour Court, Nagpur by filing U.L.P.A. Complaint of 1993 and the Labour Court vide its interim order, directed Party No. 1 to reinstate him in service, but no work was provided to him by Party No. 1 and Party No. 1 moved a revision application before the Industrial Court, Nagpur, against the order of the Labour Court raising objection of the Labour Court of having no jurisdiction to entertain and decide the matter pertaining to the establishment of the Central Government.

The further case of the workman is that out of the rest 17 retrenched workers, five workers approached the Asstt. Labour Commissioner (Central), Nagpur (“the ALC” in short) and the said five workers were provided with work by Party No. 1, so he withdrew the case filed by him in the Labour Court, Nagpur and approached the ALC by filing an application under Section 2-A of the Act and the five workers, who had been provided work by Party No. 1 after their approaching the ALC were juniors to him and the ALC issued notice to Party No. 1 and Party No. 1 did not agree for any amicable settlement, so there was failure of the conciliation proceedings and the ALC submitted the failure report to the Central Government.

It is also pleaded by the workman that Party No. 1 reinstated him in service from August, 1994 to January, 1996 and again retrenched him vide notice dated 09.02.1996 and before terminating his services, Party No. 1, neither issued one month’s notice nor paid notice pay in lieu of the notice or retrenchment compensation as provided under Section 25-F of the Act and therefore, his removal/retrenchment from services is illegal, improper and contrary to law and he is entitled for reinstatement in services with full back wages alongwith all monetary benefits of permanent employee, from the date of joining the service of Party No. 1 till the date of actual reinstatement and work is still available with Party No. 1 and Party No. 1 engaged new persons on less wages for more production.

It is further pleaded by the workman that party No. 1 reinstated him in service from August, 1994 till January, 1996 and he was retrenched by party No. 1 vide notice dated 09.02.1996 and the retrenchment itself is illegal, because, party No. 1 neither paid all the legal dues at the time of retrenchment and retrenchment compensation was not paid according to law and the retrenchment was challenged before the ALC and as the conciliation proceeding ended in failure, the reference was made for adjudication by the Central Government.

3. The Party No. 1 in the written statement has pleaded inter-alia that it does not have any Managing Director, but only a Director of Handmade Paper Industry, which runs under Khadi and Village Industries Commission (“KVIC” in short) and KVIC is a statutory body, which

was created by the statute, "Khadi & Village Industries Commission Act, 1956" and KVIC is functioning under the Ministry of Industry, Government of India and to achieve the object entrusted to KVIC, several Research and Training Centers were established including the J.B. Research Institute at Wardha, to provide artisan training courses for Handmade Paper Industries, but the unit so established at Wardha was handed over to a local institution, namely, "Khadi Gramodhyog Sangh, Manganwadi, Wardha, for the purpose of continuing the production activities and in 1984, the management of the said unit was taken over by it and it was decided to use the said unit as a demonstration-cum-extension Centre, for conducting experiments and testing etc. and arranging training of skilled workers and two technical persons were posted to look after the work and the unit finally started its Science & Technology (Research) work and for that some workers were engaged on daily wages, from November, 1984 and the work involved were of research and training and therefore not a continuous work and the workers were engaged as per requirements of work and after completion of the work, they were discontinued and none of the workers was engaged on continuous basis and the said unit functioned from 1984 to 1988 and when the unit was doing a prestigious research work of developing a process for making stiff, thick and hard water proof board by using completely waste banana stem, the workers stopped attending the work from 11.01.1988 and when enquiry was made for their non attendance, it was informed that they wanted regular work without break and unless and until their such demand would be fulfilled, they would not join the work.

It is further pleaded by Party No. 1 that six of the daily wages workers lodged complaint with the ALC and the workman, Shankar Rao Ingle approached the Labour Court, Nagpur and a written statement was filed by KVIC raising the question of jurisdiction and the said case continued till 1991 without adjudication and there was a joint discussion on 18.01.1991 between the six workers, who had made complaint to ALC and the incharge of the unit at Wardha and it was informed to the ALC that under Production Marketing and Training Programme of KVIC, the unit would start functioning from 01.02.1991, where all the six workers could be engaged on daily wages, as such, the ALC closed the case with the instruction to inform him about the appointment and appointment letters dated 28.01.1991 were issued to the said six workers including the workman, directing them to join work and out of them, five workers joined their duties and the appointment of the workman was made with the condition of withdrawal of the case filed by him, but Shankar Rao Ingle neither withdrew the case nor joined work and one of the conditions of appointment of the rest five workers was that they would enter into an agreement with its management and the finalization of the agreement took a long time and on

19.11.1993, a meeting was held with all the workers and in the presence of the then Director, Regional Office, KVIC, Wardha, the workers were requested to enter into the agreement, which was at par with another unit of Handmade Paper at Pune and the workers requested for two to three days time to give their consent, however, on 22.11.1993, the workers sent a letter informing their unwillingness to work on contract basis and that they would work only on daily wages basis and it was surprised to note that when the workers were provided work on daily wages basis in 1988, they demanded continuous work and when they were offered continuous work under Production Marketing and Training Programme in 1991, they refused to enter into an agreement and to work on contract basis, refusing to adhere to the condition of appointment and the workers could not be continued due to their refusal to enter into the agreement and their discontinuance from work was on their own accord and workers had stalled the Research Programme in 1988 and the unit had to remain close till 1991.

Party No. 1 has further pleaded that five workers approached the ALC (Central), Nagpur vide their complaint dated 22.11.1993, complaining that they were illegally terminated and the conciliation proceedings ended in failure and on submission of the failure reports by the ALC (Central), Nagpur, the Central Government refused to refer the cases of the said five workers for adjudication, by order dated 20.01.1995.

The further case of the Party No. 1 is that in the meantime, in the complaints filed by the workers in the Labour Court, Nagpur interim order was passed on 31.05.1994 directing it to reinstate the complainants and it filed revision before the Industrial Court against the order dated 31.05.1994 and on 17.08.1994, by way of pursis, the workers gave the undertaking before the Industrial Court not to proceed with the complaint filed before the Labour Court and in view of the withdrawal of the complaint by the workers, it also withdrew the revision from the Industrial Court on 10.04.1995 and on the basis of the orders of the Ministry, the Directorate of Handmade Paper Industry, Central Office at Mumbai moved a note to the commission to close down the production and Marketing activities of the unit and subsequently, the commission in its 449th meeting dated 20.12.1995 decided to close down the activities and retrench all daily wage workers and on the basis of the commission's decision, all workers were served with the retrenchment notice alongwith the retrenchment compensation on 09.02.1996 and some workers, who had left the work as far back as 1993 were also given the retrenchment benefit.

The specific case of the Party No. 1 is that the workman was not in its employment since 10.04.1984 (the year, 1984 has been wrongly mentioned as 1994 by the party No.1 in paragraph 27 of the written statement) and

he did not work continuously since the date of his appointment and he worked intermittently on daily wages, as and when work was available and as the workers denied to enter into an agreement, the production activities were stopped and presently, it is engaged only in providing Artisan training and in the year 1993, there were only two permanent Handmade Paper staff and four JBCRI staff and at present, there are only one Handmade Paper staff and three permanent JBCRI staff and the unit at Wardha had to be closed from 11.01.1988 to 1991, as the daily wage workers left the work and the unit again started functioning from 01.02.1991 and at that time, the workman and other workers were given appointment letters with conditions that they have to enter into an agreement and the claim of the workman that he had put in continuous service of 240 days is false and the workman did not join the work as per the appointment letter and as such, question of not allowing him to join work does not arise and the workman is not entitled to any relief. It is also pleaded by party No.1 that the workman was not reinstated in service from August, 1994 till January, 1996.

4. In the rejoinder, the workman has denied the allegations made in the written statement and reiterated the facts mentioned in the statement of claim. It is further pleaded by the workman in the rejoinder that he was orally terminated w.e.f. 22.11.1993 and due to the intervention of the ALC, the workers were again allowed to resume their duties and thereafter, the workers demanded for their legitimate rights including payment of wages applicable to them and Party No. 1 with malafide intension decided to stop the work, instead of implementing the statutory law and the production of the centre was closed w.e.f. 11.01.1988 to 1991 due to malafide intention of party No.1 and he was provided with work from 1st, February, 1991 as per the order issued to the workers including himself individually and he worked continuously till 22.11.1993 and he was orally terminated from services w.e.f. 22.11.1993, without service of one month's notice or payment of one month's pay in lieu of notice or retrenchment compensation and his oral termination is illegal, improper and contrary to law.

5. It is to be mentioned here that this reference alongwith references No. 161 to 163, 165 to 167 and 169 to 178 of 2002 had been disposed of by this Tribunal by a common award dated 27.03.2007, directing the reinstatement of the workman and other petitioners. Being aggrieved by the said award, the Party No. 1 approached the Hon'ble High Court, Nagpur Bench in Writ Petition No. 4503/2007 and the Hon'ble High Court by order dated 25.08.2008 have been pleased to pass the following orders:-

“In view of the above, the impugned award dated 27.03.2007 passed by the Industrial Tribunal –cum-Labour Court, Nagpur in case Nos. 160/2002 to 167/2002 and

169/2002 to 178/2002 is quashed and set aside. The Tribunal is directed to allow the parties to lead further evidence, if they so desire and decided the cases thereafter. The Tribunal is directed to decide the reference in case Nos. 174/2002 to 178/2002 by common or separate awards as he deems fit and proper on the basis of the evidence led by the parties.”

According to the direction of the Hon'ble High Court, the parties were given the chance of leading further evidence.

The workman, who had examined himself as a witness in support of his case did not adduce further evidence.

However, the Party No. 1 examined two witnesses, namely, Khandeswar Pralhad Gondane and Milind Wakode and produced documentary evidence in support of its case, besides the evidence already adduced.

6. The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim and rejoinder. However, it is to be mentioned that the workman though has mentioned in the statement of claim that he was reinstated in service from August, 1994 to January, 1996, in his examination in chief, he has not whispered a single word about the same. In his cross-examination, the workman has stated that he worked from 1977 to 1988 continuously and from 1984 to 1988, he worked in the factory and prior to that he had worked in Gramyodg Board. He has denied the suggestion that he did not work for 240 days in any calendar year. The workman in his cross-examination has further stated that the factory was closed from 1988 to 1991 and he did not work from 1988. It is clear from the evidence of the workman that he did not work with party No.1 after January, 1988.

7. The first witness for Party No. 1 is Amitabh Datta, an Asstt. Director of Party No. 1. The evidence of witness, Amitabh is on affidavit. In his examination in chief on affidavit, in paragraph 8, this witness has stated that, “the party No.2 was given appointment vide letter 23.09.1991 on temporary basis. The appointment was for a fixed period until 31.12.1991, that party No.2 however did not join the work.” In paragraph 11 of his affidavit this witness has stated that, “However the unit was again started from 01.02.1991 and the Party No. 2 were served appointment letter dated 28.01.1991 to join, with conditions that they have to enter into an agreement. That when in 1993 the workers including Party No. 2 was asked to sign the agreement. Instead of signing the agreement the workers including Party No. 2 sent letter dated 22.11.1993 informing that they are not ready to work on contract basis and will work on daily wages. That in absence of entering into the agreement which was the condition of appointment the workers could not be given work and they did not work after 22.11.1993. It is denied that party No.2 was reinstated

in service from August, 94 to Jan. 1998. It is denied that the retrenchment dated 9.2.1996 was illegal, on the contrary though the Party No. 2 had not worked after 22.11.1993, nor was entitled to, he was given the benefits alongwith other workers. The retrenchment notice alongwith the compensation was sent to all the workers including the Party No. 2."

In his cross-examination, this witness has stated that he was posted at Wardha from 1984 to 1995 and he knows the workman and the workman was working from 1985 at Wardha. In his cross-examination, this witness has categorically admitted that the workman had worked continuously from 1991 to 1993.

8. The witness no.2 examined by Party No. 1 is Khandeswar Pralhad Gondane. The examination-in-chief on affidavit of this witness is in the line of the stands taken by the Party No. 1 in the written statement. In paragraph 3 of his affidavit, this witness has stated that, "Party No. 2 as well as other employees were never in continuous employment with Party No. 1. They had not completed 240 days with Party No.1. Despite this, they were offered with closure compensation alongwith all other legal dues." Demolishing his own evidence given in the examination-in-chief, in his cross-examination, this witness has stated that he is working with Handmade Paper from 17.07.1992 and the workman was working with Handmade Paper prior to his joining in service and he was also working even after his joining service in 1992. This witness has categorically admitted that the workman worked for more than 240 days in every calendar year.

However, such evidence of the two witnesses as mentioned above is of no avail to the workman in view of his own admission that he did not work with Party No.1 after 1988.

9. The third witness for Party No. 1 is Milind Wakode, the Divisional Director, Nagpur. In his examination-in-chief on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. This witness has further stated that the Handmade Paper Unit at Wardha had been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995.

In his cross-examination, this witness has stated that Ext. M-II is the office copy of the order dated 28.01.1991 and Ext.M-II was issued after the engagement of the workman by the management and as per condition No.7 of Ext. M-II, the workman was to execute an agreement as prescribed by the office of Handmade Paper, Khadi Board, Pune and as the workman did not agree to execute any agreement, he was not provided with work or made permanent and the workman was engaged as labourer on daily wages.

10. At the time of argument, it was submitted by the learned advocate for the workman that the workman was working with the Party No. 1 as a skilled labourer w.e.f. 10.04.1984 and from the date of his initial appointment, the workman worked continuously and he had completed more than 240 days of work in each calendar year and from the date of completion of 240 days of work, the workman was entitled for regularization in service, but his services were not regularized and the workman was compelled to sign an illegal agreement and when he did not agree to sign the same, he was not allowed to join service from 22.11.1993 and such termination of the workman was without compliance of the mandatory provisions of Section 25-F of the Act and the termination amounts to retrenchment and the termination of the workman is illegal, arbitrary, malafide and contrary to the principles of natural justice and payment of retrenchment compensation in 1996 cannot cure such illegality and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1964 II LLJ-271 (Ambalal Shivlal Vs Vin (D.M.) and others), 1969 II LLJ-373 (Sivanandam Vs Press Superintendent, S. Railway, Madras), 1979 ILLJ-168 (B.M. Gupta Vs State of West Bengal), 1960 I LLJ – 251 (S.C.) (State of Bombay Vs Hospital Mazdoor Sabha) and 1964 I LLJ – 333 (S.C.) (Workmen of Subong Tea Estate Vs Subong Tea Estate).

11. On the other hand, it was submitted by the learned advocate for the Party No. 1 that the terms of the reference is vague and not specific and though, the reference is for adjudication of the legality or otherwise of the termination of the services of the workman, the alleged dated of such termination has not been mentioned in the schedule of reference and the date of the alleged termination is very crucial, in absence of which it is not possible for effective adjudication of the dispute and on that score, the reference is not maintainable. It was also submitted by the learned advocate for the Party No. 1 that in the statement of claim filed by the workman also, there is no specific pleading as to when his services were terminated and on that count also, the reference is to be answered in the negative.

It was further submitted by the learned advocate for the Party No. 1 that though the workman was offered engagement on daily wages basis as per office order dated 28.01.1991, he did not join duty and as such, there is no question of termination of the services of the workman and the workman has not adduced any legal evidence on record to show that he had worked for 240 days in the preceding 12 months of the date of termination and the onus to prove such fact is on the workman, but he failed to discharge the onus by adducing necessary evidence

and as such, he is not entitled for the benefits of the provisions of Section 25-F of the Act and as per the decision of the commissioner, the production activities of the unit was closed down and even though, the workman did not work after 1988, notice pay and retrenchment compensation was sent to him alongwith the retrenchment notice dated 09.02.1996 and Party No. 1 did not commit any illegality and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the Party No. 1 placed reliance on the decisions reported in the decisions reported in (2002) 3 SCC-25 (Range Forest Officer Vs. S.T. Hadimani), (2004) 8 SCC-195 (Municipal Corporation, Faridabad Vs. Siri Niwas), (2005) 8 SCC-481 (Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh), (2005) 8 SCC-750 (Surendra Nagar District Panchayat Vs. Dahyabhai Amarsingh), (2006) 2 SCC-716 (M.P. State Agro Industries Development Corpn. Ltd. vs. S.C. Pandey), (2006) 5 SCC-173 (Municipal Council, Sujanpur Vs. Surinder Singh), (2006) 9 SCC-697 (Krishna Bhagyal Nigam Ltd. Vs. Mohd. Rafi), (2006) 9 SCC-132 (Surendra Nagar Distt. Panchayat Vs. Ganga Ben Laljibhai), (2006) 9 SCC-124 (Chief Engineer Ranjit Sagar Dam Vs. Sham Lal), (2006) 6 SCC-275 (Rajasthan Tourism Development Corporation Vs. Intejam Alizafri), (2006) 5 SCC-127 (Nagar Mahapalika Vs. State of U.P.), (2006) 1 SCC-106 (R.M. Yellati Vs. Asstt. Executive Engineer), (2006) 2 SCC-711 (State of M.P. Vs. Arjunlal Rajak), (2007) 13 SCC-343 (Ranip Nagar Palika Vs. Babuji Gabhaji Thakore), (2007) 12-172 (State of Maharashtra Vs. Dattatraya Digamber Birajdar), 2008 II CLR 1089 (State of Haryana vs. Ramesh Kumar), 92008) 3 SCC-474 (BSNL Vs. Mahesh Chand), (2008) 5 SCC-171 (Municipal Corporation, Faridabad Vs. Durga Prasad) and (2009) 17 SCC-326 (Ajnala Cooperative Sugar Mills Ltd. Vs. Sukhraj Singh).

It is settled beyond doubt by the Hon'ble Apex Court in different judgments including the judgments cited by the learned advocate for the party No.1 that where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it is for the claimant to lead evidence to that effect and the workman's affidavit is not sufficient evidence for that purpose.

Keeping in view the principles as mentioned above, now, the present case at hand is to be considered.

12. So far the first contention raised by the learned advocate for the party No.1 regarding the non-mention of the date of termination of the workman from services in the schedule of reference and in the statement of claim is concerned, admittedly, the alleged date of termination of the workman has not been mentioned in the schedule of reference. However, in the statement of claim, in paragraph 4, it has been mentioned by the workman that, "Immediately

after the receipt of the notice dated 18.11.1993, the party No.1 had not allowed the party No.2 and his co-workers, who had issued notice to party No.1, to resume duty w.e.f. 20.11.1993." In paragraph 05 of the statement of claim, it has been mentioned that, "The party No.2 had approached the party No.1 on 21.11.1993 and subsequently on 22.01.1993, but work was not provided."

In the rejoinder, the workman has specifically in paragraphs 1 and 2 has pleaded that he was orally terminated from services w.e.f. 22.11.1993. From the materials on record, it is found that for non-mention of the date of the termination of the workman in the schedule of reference, it cannot be said that the reference is not maintainable. Hence I do not find any force in the contention raised by the learned advocate for the Party NO.1 in that regard.

13. To prove that he had worked for 240 days in the preceding 12 months of the date of termination, the workman has given his own evidence on affidavit. The workman has not produced any other evidence in support of his such claim. As already mentioned above, the workman has admitted that after 1988, he did not work with party No.1. So, it is clear from the materials available on record that the workman has failed to prove that he had worked for 240 days in the preceding 12 calendar months of the date of termination i.e. 22.11.1993. Hence, the provisions of Section 25-F of the Act are not applicable to the case of the workman and he is not entitled to any relief. Hence, it is ordered:-

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1189.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर हैंडमेड पेपर प्रोडक्शन खादी और विलेज इंडस्ट्रीज कमीशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/165/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था।

[सं. एल-42012/41/95-आईआर(डीयू)]
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March, 2014

S.O. 1189.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (I.D No. CGIT/NGP/165/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Director, Handmade Paper Production Khadi & Village Industrial Commission and their workman, received by the Central Government on 24-03-2014.

[No. L-42012/41/95-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No. CGIT/NGP/165/2002 Date : 03.03.2014.

Party No. 1 : The Director,
Handmade Paper Production
Marketing and Training Centre,
Khadi & Village Industries
Commission,
Wardha-442001.

Versus

Party No. 2 : Shri Sanjay Shivnarayan Shriwas,
R/o Manganwadi Quarter,
Ramnagar Road, Ward No. 31,
Wardha – 442001.

AWARD

(Dated: 3rd March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) (“the Act” in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Handmade Paper Production and Training Centre and their workman, Shri Sanjay Shivnarayan Shriwas, for adjudication, as per letter No.L-42012/41/95-IR(DU) dated 27.03.1996, with the following schedule:-

“Whether the action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Sanjay Shivnarayan Shriwas was proper, justified and legal? If not, to what relief the workman is entitled to?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Sanjay Shivnarayan Shriwas (“the workman” in short), filed the statement of claim and the management of Handmade Paper Production and Training Centre (“Party No. 1” in short) filed their written statement.

The case of the workman as presented in the statement of claim is that Party No. 1 is a Central Government undertaking and is engaged in manufacturing and production of Handmade Papers and in the factory of Party No. 1 at Wardha, about 250 permanent employees were working and he was employed by Party No. 1 as a semiskilled worker on 23.09.1991 and worked continuously and he was being paid @ Rs. 675 per month and though he himself and 17 other workers engaged by Party No. 1 worked with Party No. 1 for several years, they were continued as temporary workers.

The further case of the workman is that since the date of his appointment, he worked continuously without any gap and he had put in 240 days of attendance in every year of service, but he was not made permanent in service and even though, he was doing the same work as done by the permanent workers, neither he was paid wages at par with the permanent employees nor given the benefits of bonus, E.S.I. Schemes and Provident Fund Scheme etc and as Party No. 1 did not issue the Attendance-cum-Wage Card to him and the other 17 temporary workers, on 18.11.1993, all of them issued a notice through an advocate to Party No. 1 to make them permanent and to give them all other benefits of permanent employees and soon after the receipt of the said notice, Party No. 1 did not allow him and other temporary workers to resume duty w.e.f. 20.11.1993 and he was informed by Party No. 1 through Shri A. Datta that he would be allowed to resume duty in case of his consenting to work under the Contractor, but he refused the offer, as because, he had already worked with Party No. 1 for years together and was entitled to be made permanent in service as per the representation dated 18.11.1993 and though he approached Party No. 1 on 21.11.1993 and 22.11.1993, he was not provided with work, so he alongwith the other 17 temporary workers on 22.11.1993 issued another notice, but inspite of the same, no work was provided to them, so they issued another notice through the advocate on 27.11.1993, but Party No. 1 neither replied to the notice nor provided him any work and thereafter also, he continuously approached and requested the Party No. 1 to provide him work, but Party No. 1 did not pay any heed to his request and after waiting for a long time, he approached the Labour Court, Nagpur by filing U.L.P.A. Complaint No. 796 of 1993 and the Labour Court vide its interim order, directed Party No. 1 to reinstate him in service, but no work was provided to him by Party NO. 1 and Party No. 1 moved a revision application before the Industrial Court, Nagpur, against the order of the Labour Court raising objection of the Labour Court of having no jurisdiction to entertain and decide the matter pertaining to the establishment of the Central Government.

The further case of the workman is that out of the rest 17 retrenched workers, five workers approached the Asstt. Labour Commissioner (Central), Nagpur (“the ALC” in short) and the said five workers were provided with

work by Party No. 1, so he withdrew the case filed by him in the Labour Court, Nagpur and approached the ALC by filing an application under Section 2-A of the Act and the five workers, who had been provided work by Party No. 1 after their approaching the ALC were juniors to him and the ALC issued notice to Party No. 1 and Party No. 1 did not agree for any amicable settlement, so there was failure of the conciliation proceedings and the ALC submitted the failure report to the Central Government.

It is also pleaded by the workman that Party No. 1 had issued experience certificate in his favour and before terminating his services, Party No. 1 neither issued one month's notice nor paid notice pay in lieu of the notice or retrenchment compensation as provided under Section 25-F of the Act and therefore, his removal/retrenchment from services is illegal, improper and contrary to law and he is entitled for reinstatement in services with full back wages alongwith all monetary benefits of permanent employee, from the date of joining the service of Party No. 1 till the date of actual reinstatement and work is still available with Party No. 1 and Party No. 1 engaged new persons on less wages for more production.

3. The Party No. 1 in the written statement has pleaded inter-alia that it does not have any Managing Director, but only a Director of Handmade Paper Industry, which runs under Khadi and Village Industries Commission ("KVIC" in short) and KVIC is a statutory body, which was created by the statute, "Khadi & Village Industries commission Act, 1956" and KVIC is functioning under the Ministry of Industry, Government of India and to achieve the object entrusted to KVIC, several Research and Training Centers were established including the J.B. Research Institute at Wardha, to provide artisan training courses for Handmade Paper Industries, but the unit so established at Wardha was handed over to a local institution, namely, "Khadi Gramodhyog Sangh, Manganwadi, Wardha, for the purpose of continuing the production activities and in 1984, the management of the said unit was taken over by it and it was decided to use the said unit as a demonstration-cum-extension Centre, for conducting experiments and testing etc. and arranging training of skilled workers and two technical persons were posted to look after the work and the unit finally started its Science & Technology (Research) work and for that some workers were engaged on daily wages, from November, 1984 and the work involved were of research and training and therefore not a continuous work and the workers were engaged as per requirements of work and after completion of the work, they were discontinued and none of the workers was engaged on continuous basis and the said unit functioned from 1984 to 1988 and when the unit was doing a prestigious research work of developing a process for making stiff, thick and hard water proof board by using completely waste banana stem, the workers stopped attending the work from 11.01.1988 and

when enquiry was made for their non attendance, it was informed that they wanted regular work without break and unless and until their such demand would be fulfilled, they would not join the work.

It is further pleaded by Party No. 1 that six of the daily wages workers lodged complaint with the ALC and worker Shankar Rao Ingle approached the Labour court, Nagpur and a written statement was filed by KVIC raising the question of jurisdiction and the said case continued till 1991 without adjudication and there was a joint discussion on 18.01.1991 between the six workers, who had made complaint to ALC and the in charge of the unit at Wardha and it was informed to the ALC that under Production Marketing and Training Programme of KVIC, the unit would start functioning from 01.02.1991, where all the six workers could be engaged on daily wages, as such, the ALC closed the case with the instruction to inform him about the appointment and appointment letters dated 28.01.1991 were issued to the said six workers including Shankar Rao Ingle, directing them to join work and out of them, five workers joined their duties and the appointment of Shankar Rao Ingle was made with the condition of withdrawal of the case filed by him, but Shankar Rao Ingle neither withdrew the case nor joined work and one of the conditions of appointment of the rest five workers was that they would enter into an agreement with its management and the finalization of the agreement took a long time and on 19.11.1993, a meeting was held with all the workers and in the presence of the then Director, Regional Office, KVIC, Wardha, the workers were requested to enter into the agreement, which was at par with another unit of Handmade Paper at Pune and the workers requested for two to three days time to give their consent, however, on 22.11.1993, the workers sent a letter informing their unwillingness to work on contract basis and that they would work only on daily wages basis and it was surprised to note that when the workers were provided work on daily wages basis in 1988, they demanded continuous work and when they were offered continuous work under Production Marketing and Training Programme in 1991, they refused to enter into an agreement and to work on contract basis, refusing to adhere to the condition of appointment and the workers could not be continued due to their refusal to enter into the agreement and their discontinuance from work was on their own accord and workers had stalled the Research Programme in 1988 and the unit had to remain close till 1991.

Party No. 1 has further pleaded that five workers approached the ALC (Central), Nagpur vide their complaint dated 22.11.1993, complaining that they were illegally terminated and the conciliation proceedings ended in failure and on submission of the failure reports by the ALC (Central), Nagpur, the Central Government refused to refer the cases of the said five workers for adjudication, by order dated 20.01.1995.

The further case of the Party No. 1 is that in the meantime, in the complaints filed by the workers in the Labour Court, Nagpur interim order was passed on 31.05.1994 directing it to reinstate the complainants and it filed revision before the Industrial Court against the order dated 31.05.1994 and on 17.08.1994, by way of pursis, the workers gave the undertaking before the Industrial Court not to proceed with the complaint filed before the Labour Court and in view of the withdrawal of the complaint by the workers, it also withdrew the revision from the Industrial Court on 10.04.1995 and on the basis of the orders of the Ministry, the Directorate of Handmade Paper Industry, Central Office at Mumbai moved a note to the commission to close down the production and Marketing activities of the unit and subsequently, the commission in its 449 the meeting dated 20.12.1995 decided to close down the activities and retrench all daily wage workers and on the basis of the commission's decision, all workers were served with the retrenchment notice alongwith the retrenchment compensation on 09.02.1996 and some workers, who had left the work as far back as 1993 were also given the retrenchment benefit.

The specific case of the Party No. 1 is that the workman was given appointment order on 23.09.1991 on temporary basis on condition that he will enter into an agreement and he did not work continuously since the date of his appointment and he worked intermittently on daily wages, as and when work was available and as the workers denied to enter into an agreement, the production activities were stopped and presently, it is engaged only in providing Artisan training and in the year 1993, there were only two permanent Handmade Paper staff and four JBCRI staff and at present, there are only one Handmade Paper staff and three permanent JBCRI staff and the unit at Wardha had to be closed from 11.01.1988 to 1991, as the daily wage workers left the work and the unit again started functioning from 01.02.1991 and at that time, the workman and other workers were given appointment letters with conditions that they have to enter into an agreement and the claim of the workman that he had put in continuous service of 240 days is false and the workman did not join the work after 22.11.1993 and as such, question of not allowing him to join work does not arise and the workman is not entitled to any relief.

4. In the rejoinder, the workman has denied the allegations made in the written statement and reiterated the facts mentioned in the statement of claim. It is further pleaded by the workman in the rejoinder that he was orally terminated w.e.f. 22.11.1993 and due to the intervention of the ALC, the workers were again allowed to resume their duties and thereafter, the workers demanded for their legitimate rights including payment of wages applicable to them and Party No. 1 with malafide intension decided to stop the work, instead of implementing the statutory law and he was provided with work from 1st, February, 1991 as

per the order issued to the workers including himself individually and he worked continuously till 22.11.1993 and he was orally terminated from services w.e.f. 22.11.1993, without service of one month's notice or payment of one month's pay in lieu of notice or retrenchment compensation and his oral termination is illegal, improper and contrary to law.

5. It is to be mentioned here that this reference alongwith references No. 160 to 164, 166, 167 and 169 to 178 of 2002 had been disposed of by this Tribunal by a common award dated 27.03.2007, directing the reinstatement of the workman and other petitioners. Being aggrieved by the said award, the Party No. 1 approached the Hon'ble High Court, Nagpur Bench in Writ Petition No. 4503/2007 and the Hon'ble High Court by order dated 25.08.2008 have been pleased to pass the following orders:-

"In view of the above, the impugned award dated 27.03.2007 passed by the Industrial Tribunal –cum-Labour Court, Nagpur in case Nos. 160/2002 to 167/2002 and 169/2002 to 178/2002 is quashed and set aside. The Tribunal is directed to allow the parties to lead further evidence, if they so desire and decided the cases thereafter. The Tribunal is directed to decide the reference in case Nos. 174/2002 to 178/2002 by common or separate awards as he deems fit and proper on the basis of the evidence led by the parties."

According to the direction of the Hon'ble High Court, the parties were given the chance of leading further evidence.

The workman, who had examined himself as a witness in support of his case did not adduce further evidence.

However, the Party No. 1 examined two witnesses, namely, Khandeswar Pralhad Gondane and Milind Wakode and produced documentary evidence in support of its case, besides the evidence already adduced.

6. The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim and rejoinder. The workman in his cross-examination has stated that he worked continuously from 23.09.1991 to 20.11.93. He has denied the suggestion that he did not work for 240 days in any calendar year. The workman in his cross-examination has further stated that one registered letter, M-2 was sent to him, but he returned the same.

7. The first witness for Party No. 1 is Amitabh Datta, an Asstt. Director of Party No. 1. The evidence of witness, Amitabh is on affidavit. In his examination in chief on affidavit, in paragraph 8, this witness has stated that, "the party No.2 was given appointment vide letter 23.09.1991 on temporary basis. The appointment was for a fixed period until 31.12.1991, that party No.2 however did not join the

work.” In paragraph 11 of his affidavit this witness has stated that, “However the unit was again started from 01.02.1991 and the Party No. 2 were served appointment letter dated 28.01.1991 to join, with conditions that they have to enter into an agreement. That when in 1993 the workers including Party No. 2 was asked to sign the agreement. Instead of signing the agreement the workers including Party No. 2 sent letter dated 22.11.1993 informing that they are not ready to work on contract basis and will work on daily wages. That in absence of entering into the agreement which was the condition of appointment the workers could not be given work and they did not work after 22.11.1993. It is denied that party No.2 was reinstated in service from August,94 to Jan. 1998. It is denied that the retrenchment dated 9.2.1996 was illegal, on the contrary though the Party No. 2 had not worked after 22.11.1993, nor was entitled to, he was given the benefits alongwith other workers. The retrenchment notice alongwith the compensation was sent to all the workers including the Party No. 2.”

In his cross-examination, this witness has stated that he was posted at Wardha from 1984 to 1995 and he knows the workman and the workman was working from 1985 at Wardha. In his cross-examination, this witness has categorically admitted that the workman had worked continuously from 1991 to 1993.

8. The witness no.2 examined by Party No. 1 is Khandeswar Pralhad Gondane. The examination-in-chief on affidavit of this witness is in the line of the stands taken by the Party No. 1 in the written statement. In paragraph 3 of his affidavit, this witness has stated that, “party no. 2 as well as other employees were never in continuous employment with Party No. 1. They had not completed 240 days with Party No.1. Despite this, they were offered with closure compensation alongwith all other legal dues.” Demolishing his own evidence given in the examination-in-chief, in his cross-examination, this witness has stated that he is working with Handmade Paper from 17.07.1992 and the workman was working with Handmade Paper prior to his joining in service and he was also working even after his joining service in 1992. This witness has categorically admitted that the workman worked for more than 240 days in every calendar year.

9. The third witness for Party No. 1 is Milind Wakode, the Divisional Director, Nagpur. In his examination-in-chief on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. This witness has further stated that the Handmade Paper Unit at Wardha had been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995 and retrenchment notice alongwith compensation was sent to all the workers by letter dated 09/10.02.1996. This witness has also proved the office copy of the termination order as Ext. M-II.

In his cross-examination, this witness has stated that Ext. M-II is dated 09.02.1996 and he cannot say the exact date of termination of the workman and Ext. M-III is the office copy of the order dated 31.01.1991 and Ext.M-III was issued after the engagement of the workman by the management and as per condition No.7 of Ext. M-III, the workman was to execute an agreement as prescribed by the office of Handmade Paper, Khadi Board, Pune and as the workman did not agree to execute any agreement, he was not provided with work or made permanent and the workman was engaged as labourer on daily wages and he does not have any idea as to how the retrenchment compensation paid to the workman was calculated and as per Ext. M-II, retrenchment compensation was paid to the workman for 3 years i.e. for 45 days.

10. At the time of argument, it was submitted by the learned advocate for the workman that the workman was working with the Party No. 1 as a semiskilled labourer w.e.f. 23.09.1991 and from the date of his initial appointment, the workman worked continuously and he had completed more than 240 days of work in each calendar year and from the date of completion of 240 days of work, the workman was entitled for regularization in service, but his services were not regularized and the workman was compelled to sign an illegal agreement and when he did not agree to sign the same, he was not allowed to join service from 22.11.1993 and such termination of the workman was without compliance of the mandatory provisions of Section 25-F of the Act and the termination amounts to retrenchment and the termination of the workman is illegal, arbitrary, malafide and contrary to the principles of natural justice and payment of retrenchment compensation in 1996 cannot cure such illegality and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1964 II LLJ-271 (Ambalal Shivlal Vs Vin (D.M.) and others), 1969 II LLJ-373 (Sivanandam Vs Press Superintendent, S. Railway, Madras), 1979 I LLJ-168 (B.M. Gupta Vs State of West Bengal), 1960 I LLJ – 251 (S.C.) (State of Bombay Vs Hospital Mazdoor Sabha) and 1964 I LLJ – 333 (S.C.) (Workmen of Subong Tea Estate Vs Subong Tea Estate).

11. On the other hand, it was submitted by the learned advocate for the Party No. 1 that the terms of the reference is vague and not specific and though, the reference is for adjudication of the legality or otherwise of the termination of the services of the workman, the alleged dated of such termination has not been mentioned in the schedule of reference and the date of the alleged termination is very crucial, in absence of which it is not possible for effective adjudication of the dispute and on that score, the reference is not maintainable. It was also

submitted by the learned advocate for the Party No. 1 that in the statement of claim filed by the workman also, there is no specific pleading as to when his services were terminated and on that count also, the reference is to be answered in the negative.

It was further submitted by the learned advocate for the Party No. 1 that though the workman was offered engagement on daily wages basis as per office order dated 31.01.1991, he did not join duty and as such, there is no question of termination of the services of the workman and even for the sake of argument, it is held that the workman worked as per office order dated 31.01.1991 on daily wages, the workman has not adduced any legal evidence on record to show that he had worked for 240 days in the preceding 12 months of the date of termination and the onus to prove such fact is on the workman, but he failed to discharge the onus by adducing necessary evidence and as such, he is not entitled for the benefits of the provisions of Section 25-F of the Act and as per the decision of the commissioner, the production activities of the unit was closed down and even though, the workman did not work after 1988, notice pay and retrenchment compensation was sent to him alongwith the retrenchment notice dated 09.02.1996 and Party No. 1 did not commit any illegality and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the Party No. 1 placed reliance on the decisions reported in the decisions reported in (2002) 3 SCC-25 (Range Forest Officer Vs. S.T. Hadimani), (2004) 8 SCC-195 (Municipal Corporation, Faridabad Vs. siri Niwas), (2005) 8 SCC-481 (Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh), (2005) 8 SCC-750 (Surendra Nagar District Panchayat Vs. Dahyabhai Amarsingh), (2006) 2 SCC-716 (M.P. State Agro Industries Development Corpn. Ltd. Vs. S.C. pandey), (2006) 5 SCC-173 (Municipal Council, Sujanpur vs. Surinder Singh), (2006) 9 SCC-697 (Krishna Bhagyajal Nigam Ltd. Vs. Mohd. Rafi), (2006) 9 SCC-132 (Surendranagar Distt. Panchayat Vs. Ganga Ben Laljibhai), (2006) 9 SCC-124 Chief Engineer Ranjit Sagar Dam Vs. Sham Lal), (2006) 6 SCC-275 (Rajasthan Tourism Development Corporation Vs. Intejam Alizafri), (2006) 5 SCC-127 (Nagar Mahapalika vs. State of U.P.), (2006) 1 SCC-106 (R.M. Yellati vs. Asstt. Executive Engineer), (2006) 2 SCC-711 (State of M.P. Vs. Arjunlal Rajak), (2007) 13 SCC-343 (Ranip Nagar Palika Vs. Babuji Gabhaji Thakore), (2007) 12-172 (State of Maharashtra Vs. Dattatraya Digamber Birajdar), 2008 II CLR 1089 (State of Haryana Vs. Ramesh Kumar), (2008) 3 SCC-474 (BSNL Vs. Mahesh Chand), (2008) 5 SCC-171 (Municipal Corporation, Faridabad Vs. Durga Prasad) and (2009) 17 SCC-326 (Ajnala Cooperative Sugar Mills Ltd. Vs. Sukhraj Singh).

It is settled beyond doubt by the Hon'ble Apex Court in different judgments including the judgments cited by the learned advocate for the party No.1 that where the

workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it is for the claimant to lead evidence to that effect and the workman's affidavit is not sufficient evidence for that purpose.

Keeping in view the principles as mentioned above, now, the present case at hand is to be considered.

12. So far the first contention raised by the learned advocate for the party No.1 regarding the non-mention of the date of termination of the workman from services in the schedule of reference and in the statement of claim is concerned, admittedly, the alleged date of termination of the workman has not been mentioned in the schedule of reference. However, in the statement of claim, in paragraph 4, it has been mentioned by the workman that, "Immediately after the receipt of the notice dated 18.11.1993, the party No.1 had not allowed the party No.2 and his co-workers, who had issued notice to party No.1, to resume duty w.e.f. 20.11.1993." In paragraph 05 of the statement of claim, it has been mentioned that, "The party No.2 had approached the party No.1 on 21.11.1993 and subsequently on 22.01.1993, but work was not provided."

In the rejoinder, the workman has specifically in paragraphs 1 and 2 has pleaded that he was orally terminated from services w.e.f. 22.11.1993. From the materials on record, it is found that for non-mention of the date of the termination of the workman in the schedule of reference, it cannot be said that the reference is not maintainable. Hence, I find no force in the contention raised by the learned advocate for the Party No. 1 in that respect.

13. To prove that he had worked for 240 days in the preceding 12 months of the date of termination, the workman has given his own evidence on affidavit. Though, the workman has not produced any other evidence in support of his such claim, his evidence has been corroborated by the evidence of the witnesses no.1 and 2 of the party No.1. As already mentioned above, Amitabh Datta, the witness No.1 for party No.1 has stated that the workman worked continuously from 1991 to 1993. Khandeswar Pralhad Gondane, witness No.2 for the party No.1 has stated that the workman worked for more than 240 days in every calendar year.

14. Apart from the oral evidence, the documentary evidence produced by the party No.1 clinches the issue in favour of the workman. The party No.1 has produced and proved the notice of retrenchment dated 09/12/02/1996 issued to the workman as Ext. M-II. In Ext. M-II, it has been mentioned that the workman joined in February, 1991 and worked from September, 1991 to November, 1993 and he is entitled for retrenchment compensation for two years i.e. for 30 days at the rate of 15 days per year. So, it is clear

from the materials on record that the workman infact had worked for more than 240 days in the preceding 12 calendar months of the date of his termination i.e. 22.11.1993. It is also found from the material on record that before the termination of the workman from services, the mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him. So, the termination of the workman from services amounts to retrenchment and such termination is illegal.

Applying the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocate for the workman to the case in hand, it is found that the issuance of the retrenchment notice as per Ext. M-II and sending of the demand draft towards retrenchment compensation and one month's wages on 09/10.02.1996 does not cure the illegality of termination of the services of the workman w.e.f. 22.11.1993.

15. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh) have been pleased to take into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (In charge Officer Vs. Shankar Setty.) and have been pleased to hold that:-

"In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted

that the workman was engaged as a daily wager in 1991, about 23 years back. It is also found that he continued as such till 22.11.1993, when he was terminated from services by party no.1. It is also found that production and marketing activities of the handmade paper unit, Wardha has been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 60,000 (Rupees sixty thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri S. Sanjay Shivnarayan Shriwas is illegal and unjustified. The workman is entitled for monetary compensation of Rs.60,000 (Rupees sixty thousand only) in lieu of reinstatement. He is not entitled for any other relief. The party no.1 is directed to pay the monetary compensation of Rs. 60,000 to the workman Shri Sanjay Shivnarayan Shriwas within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 percent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1190.—औद्योगिक विवाद अधिनियम, 1947 (1947

का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर हैंडमेड पेपर प्रोडक्शन खादी और विलेज इंडस्ट्रीज कमीशन के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/166/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-42012/39/95-आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March , 2014

S.O. 1190.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (L.D No. CGIT/NGP/166/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Director, Handmade Paper

Production Khadi & Village Industrial Commission and their workman, received by the Central Government on 24-03-2014.

[No. L-42012/39/95-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/166/2002 Date: 03-03-2014.

Party No. 1 : The Director,
Handmade Paper Production
Marketing and Training Centre,
Khadi & Village Industries
Commission,
Wardha-442001.

Versus

Party No. 2 : Shri Baba Gopal Rao Somnathe,
R/o Sindi(Meghe), Near
Grampanchayat,
Teh./Distt.
Wardha – 442001.

AWARD

(Dated: 3rd March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) (“the Act” in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Handmade Paper Production and Training Centre and their workman, Shri Baba Gopal Rao Somnathe, for adjudication, as per letter No.L-42012/39/95-IR(DU) dated 27.03.1996, with the following schedule:-

“Whether the action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Baba Gopal Rao Somnathe was proper, justified and legal? If not, to what relief the workman is entitled to?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Baba Gopal Rao Somnathe, (“the workman” in short), filed the statement of claim and the management of Handmade Paper Production and Training Centre (“Party No. 1” in short) filed their written statement.

The case of the workman as presented in the statement of claim is that Party No. 1 is a Central Government undertaking and is engaged in manufacturing

and production of Handmade Papers and in the factory of Party No. 1 at Wardha, about 250 permanent employees were working and he was employed by Party No. 1 as a skilled worker on 01.10.1984 and worked continuously and he was being paid @ Rs. 800 per month and though he himself and 17 other workers engaged by Party No. 1 worked with Party No. 1 for several years, they were continued as temporary workers.

The further case of the workman is that since the date of his appointment, he worked continuously without any gap and he had put in 240 days of attendance in every year of service, but he was not made permanent in service and even though, he was doing the same work as done by the permanent workers, neither he was paid wages at par with the permanent employees nor given the benefits of bonus, E.S.I. Schemes and Provident Fund Scheme etc and as Party No. 1 did not issue the attendance-cum-Wage Card to him and the other 17 temporary workers, on 18.11.1993, all of them issued a notice through an advocate to Party No 1 to make them permanent and to give them all other benefits of permanent employees and soon after the receipt of the said notice, Party No. 1 did not allow him and other temporary workers to resume duty w.e.f. 20.11.1993 and he was informed by Party No1 through Shri A. Datta that he would be allowed to resume duty in case of his consenting to work under the Contractor, but he refused the offer, as because, he had already worked with Party No. 1 for years together and was entitled to be made permanent in service as per the representation dated 18.11.1993 and though he approached Party No. 1 on 21.11.1993 and 22.11.1993, he was not provided with work, so he alongwith the other 17 temporary workers on 22.11.1993 issued another notice, but inspite of the same, no work was provided to them, so they issued another notice through the advocate on 27.11.1993, but Party No. 1 neither replied to the notice nor provided him any work and thereafter also, he continuously approached and requested the Party No. 1 to provide him work, but Party No. 1 did not pay any heed to his request and after waiting for a long time, he approached the Labour Court, Nagpur by filing U.L.P.A. Complaint No. 797 of 1993 and the Labour Court vide its interim order, directed Party No. 1 to reinstate him in service, but no work was provided to him by Party No. 1 and Party No. 1 moved a revision application before the Industrial Court, Nagpur, against the order of the Labour Court raising objection of the Labour Court of having no jurisdiction to entertain and decide the matter pertaining to the establishment of the Central Government.

The further case of the workman is that out of the rest 17 retrenched workers, five workers approached the Asstt. Labour Commissioner (Central), Nagpur (“the ALC” in short) and the said five workers were provided with work by Party No. 1, so he withdrew the case filed by him in the Labour Court, Nagpur and approached the ALC by filing an application under Section 2-A of the Act and the

five workers, who had been provided work by Party No. 1 after their approaching the ALC were juniors to him and the ALC issued notice to Party No. 1 and Party No. 1 did not agree for any amicable settlement, so there was failure of the conciliation proceedings and the ALC submitted the failure report to the Central Government.

It is also pleaded by the workman that Party No. 1 had issued experience certificate in his favour and before terminating his services, Party No. 1 neither issued one month's notice nor paid notice pay in lieu of the notice or retrenchment compensation as provided under Section 25-F of the Act and therefore, his removal/retrenchment from services is illegal, improper and contrary to law and he is entitled for reinstatement in services with full back wages alongwith all monetary benefits of permanent employee, from the date of joining the service of Party No. 1 till the date of actual reinstatement and work is still available with Party No. 1 and Party No. 1 engaged new persons on less wages for more production.

3. The Party No. 1 in the written statement has pleaded inter-alia that it does not have any Managing Director, but only a Director of Handmade Paper Industry, which runs under Khadi and Village Industries Commission ("KVIC" in short) and KVIC is a statutory body, which was created by the statute, "Khadi & Village Industries Commission Act, 1956" and KVIC is functioning under the Ministry of Industry, Government of India and to achieve the object entrusted to KVIC, several Research and Training Centers were established including the J.B. Research Institute at Wardha, to provide artisan training courses for Handmade Paper Industries, but the unit so established at Wardha was handed over to a local institution, namely, "Khadi Gramodhyog Sangh, Manganwadi, Wardha, for the purpose of continuing the production activities and in 1984, the management of the said unit was taken over by it and it was decided to use the said unit as a demonstration-cum-extension Centre, for conducting experiments and testing etc. and arranging training of skilled workers and two technical persons were posted to look after the work and the unit finally started its Science & Technology (Research) work and for that some workers were engaged on daily wages, from November, 1984 and the work involved were of research and training and therefore not a continuous work and the workers were engaged as per requirements of work and after completion of the work, they were discontinued and none of the workers was engaged on continuous basis and the said unit functioned from 1984 to 1988 and when the unit was doing a prestigious research work of developing a process for making stiff, thick and hard water proof board by using completely waste banana stem, the workers stopped attending the work from 11.01.1988 and when enquiry was made for their non attendance, it was informed that they wanted regular work without break and

unless and until their such demand would be fulfilled, they would not join the work.

It is further pleaded by Party No. 1 that six of the daily wages workers lodged complaint with the ALC and worker Shankar Rao Ingle approached the Labour court, Nagpur and a written statement was filed by KVIC raising the question of jurisdiction and the said case continued till 1991 without adjudication and there was a joint discussion on 18.01.1991 between the six workers, who had made complaint to ALC and the in charge of the unit at Wardha and it was informed to the ALC that under Production Marketing and Training Programme of KVIC, the unit would start functioning from 01.02.1991, where all the six workers could be engaged on daily wages, as such, the ALC closed the case with the instruction to inform him about the appointment and appointment letters dated 28.01.1991 were issued to the said six workers including Shankar Rao Ingle, directing them to join work and out of them, five workers joined their duties and the appointment of Shankar Rao Ingle was made with the condition of withdrawal of the case filed by him, but Shankar Rao Ingle neither withdrew the case nor joined work and one of the conditions of appointment of the rest five workers was that they would enter into an agreement with its management and the finalization of the agreement took a long time and on 19.11.1993, a meeting was held with all the workers and in the presence of the then Director, Regional Office, KVIC, Wardha, the workers were requested to enter into the agreement, which was at par with another unit of Handmade Paper at Pune and the workers requested for two to three days time to give their consent, however, on 22.11.1993, the workers sent a letter informing their unwillingness to work on contract basis and that they would work only on daily wages basis and it was surprised to note that when the workers were provided work on daily wages basis in 1988, they demanded continuous work and when they were offered continuous work under Production Marketing and Training Programme in 1991, they refused to enter into an agreement and to work on contract basis, refusing to adhere to the condition of appointment and the workers could not be continued due to their refusal to enter into the agreement and their discontinuance from work was on their own accord and workers had stalled the Research Programme in 1988 and the unit had to remain close till 1991.

Party No. 1 has further pleaded that five workers approached the ALC (Central), Nagpur vide their complaint dated 22.11.1993, complaining that they were illegally terminated and the conciliation proceedings ended in failure and on submission of the failure reports by the ALC (Central), Nagpur, the Central Government refused to refer the cases of the said five workers for adjudication, by order dated 20.01.1995.

The further case of the Party No. 1 is that in the meantime, in the complaints filed by the workers in the Labour Court, Nagpur interim order was passed on 31.05.1994 directing it to reinstate the complainants and it filed revision before the Industrial Court against the order dated 31.05.1994 and on 17.08.1994, by way of pursis, the workers gave the undertaking before the Industrial Court not to proceed with the complaint filed before the Labour Court and in view of the withdrawal of the complaint by the workers, it also withdrew the revision from the Industrial Court on 10.04.1995 and on the basis of the orders of the Ministry, the Directorate of Handmade Paper Industry, Central Office at Mumbai moved a note to the commission to close down the production and Marketing activities of the unit and subsequently, the commission in its 449th meeting dated 20.12.1995 decided to close down the activities and retrench all daily wage workers and on the basis of the commission's decision, all workers were served with the retrenchment notice alongwith the retrenchment compensation on 09.02.1996 and some workers, who had left the work as far back as 1993 were also given the retrenchment benefit.

The specific case of the Party No. 1 is that the workman was not in its employment since 01.10.1984 and he did not work continuously since the date of his appointment and he worked intermittently on daily wages, as and when work was available and as the workers denied to enter into an agreement, the production activities were stopped and presently, it is engaged only in providing Artisan training and in the year 1993, there were only two permanent Handmade Paper staff and four JBCRI staff and at present, there are only one Handmade Paper staff and three permanent JBCRI staff and the unit at Wardha had to be closed from 11.01.1988 to 1991, as the daily wage workers left the work and the unit again started functioning from 01.02.1991 and at that time, the workman and other workers were given appointment letters with conditions that they have to enter into an agreement and the claim of the workman that he had put in continuous service of 240 days is false and the workman did not join the work after 22.11.1993 and as such, question of not allowing him to join work does not arise and the workman is not entitled to any relief.

4. In the rejoinder, the workman has denied the allegations made in the written statement and reiterated the facts mentioned in the statement of claim. It is further pleaded by the workman in the rejoinder that he was orally terminated w.e.f. 22.11.1993 and due to the intervention of the ALC, the workers were again allowed to resume their duties and thereafter, the workers demanded for their legitimate rights including payment of wages applicable to them and Party No. 1 with malafide intension decided to stop the work, instead of implementing the statutory law and he was provided with work from 1st, February, 1991 as

per the order issued to the workers including himself individually and he worked continuously till 22.11.1993 and he was orally terminated from services w.e.f. 22.11.1993, without service of one month's notice or payment of one month's pay in lieu of notice or retrenchment compensation and his oral termination is illegal, improper and contrary to law.

5. It is to be mentioned here that this reference alongwith references No. 160 to 165, 167 and 169 to 178 of 2002 had been disposed of by this Tribunal by a common award dated 27.03.2007, directing the reinstatement of the workman and other petitioners. Being aggrieved by the said award, the Party No. 1 approached the Hon'ble High Court, Nagpur Bench in Writ Petition No. 4503/2007 and the Hon'ble High Court by order dated 25.08.2008 have been pleased to pass the following orders:-

“In view of the above, the impugned award dated 27.03.2007 passed by the Industrial Tribunal –cum-Labour Court, Nagpur in case Nos. 160/2002 to 167/2002 and 169/2002 to 178/2002 is quashed and set aside. The Tribunal is directed to allow the parties to lead further evidence, if they so desire and decided the cases thereafter. The Tribunal is directed to decide the reference in case Nos. 174/2002 to 178/2002 by common or separate awards as he deems fit and proper on the basis of the evidence led by the parties.”

According to the direction of the Hon'ble High Court, the parties were given the chance of leading further evidence.

The workman, who had examined himself as a witness in support of his case did not adduce further evidence.

However, the Party No. 1 examined two witnesses, namely, Khandeswar Pralhad Gondane and Milind Wakode and produced documentary evidence in support of its case, besides the evidence already adduced.

6. The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim and rejoinder. The workman in his cross-examination has stated that he worked continuously from 1984 to November, 1993. He has denied the suggestion that he did not work for 240 days in any calendar year. The workman in his cross-examination has further stated that one registered letter, M-2 was sent to him, but he returned the same.

7. The first witness for Party No. 1 is Amitabh Datta, an Asstt. Director of Party No. 1. The evidence of witness, Amitabh is on affidavit. In his examination in chief on affidavit, in paragraph 8, this witness has stated that, “the party No. 2 was given appointment vide letter 23.09.1991 on temporary basis. The appointment was for a fixed period until 31.12.1991, that party No. 2 however did not join the

work.” In paragraph 11 of his affidavit this witness has stated that, “However the unit was again started from 01.02.1991 and the Party No. 2 were served appointment letter dated 28.01.1991 to join, with conditions that they have to enter into an agreement. That when in 1993 the workers including Party No. 2 was asked to sign the agreement. Instead of signing the agreement the workers including Party No. 2 sent letter dated 22.11.1993 informing that they are not ready to work on contract basis and will work on daily wages. That in absence of entering into the agreement which was the condition of appointment the workers could not be given work and they did not work after 22.11.1993. It is denied that party No.2 was reinstated in service from August,94 to Jan. 1998. It is denied that the retrenchment dated 9.2.1996 was illegal, on the contrary though the Party No. 2 had not worked after 22.11.1993, nor was entitled to, he was given the benefits alongwith other workers. The retrenchment notice alongwith the compensation was sent to all the workers including the Party No. 2.”

In his cross-examination, this witness has stated that he was posted at Wardha from 1984 to 1995 and he knows the workman and the workman was working from 1985 at Wardha. In his cross-examination, this witness has categorically admitted that the workman had worked continuously from 1991 to 1993.

8. The witness no.2 examined by Party No. 1 is Khandeswar Pralhad Gondane. The examination-in-chief on affidavit of this witness is in the line of the stands taken by the Party No. 1 in the written statement. In paragraph 3 of his affidavit, this witness has stated that, “party no. 2 as well as other employees were never in continuous employment with Party No. 1. They had not completed 240 days with Party No.1. Despite this, they were offered with closure compensation alongwith all other legal dues.” Demolishing his own evidence given in the examination-in-chief, in his cross-examination, this witness has stated that he is working with Handmade Paper from 17.07.1992 and the workman was working with Handmade Paper prior to his joining in service and he was also working even after his joining service in 1992. This witness has categorically admitted that the workman worked for more than 240 days in every calendar year.

9. The third witness for Party No. 1 is Milind Wakode, the Divisional Director, Nagpur. In his examination-in-chief on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. This witness has further stated that the Handmade Paper Unit at Wardha had been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995 and retrenchment notice alongwith compensation was sent to all the workers by letter dated 09/10.02.1996. This witness has also proved the office copy of the termination order as Ext. M-II.

In his cross-examination, this witness has stated that Ext. M-II is dated 09.02.1996 and he cannot say the exact date of termination of the workman and Ext. M-III is the office copy of the order dated 31.01.1991 and Ext.M-III was issued after the engagement of the workman by the management and as per condition No.7 of Ext. M-III, the workman was to execute an agreement as prescribed by the office of Handmade Paper, Khadi Board, Pune and as the workman did not agree to execute any agreement, he was not provided with work or made permanent and the workman was engaged as labourer on daily wages and he does not have any idea as to how the retrenchment compensation paid to the workman was calculated and as per Ext. M-II, retrenchment compensation was paid to the workman for 3 years i.e. for 45 days.

10. At the time of argument, it was submitted by the learned advocate for the workman that the workman was working with the Party No. 1 as a skilled labourer w.e.f. 01.10.1984 and from the date of his initial appointment, the workman worked continuously and he had completed more than 240 days of work in each calendar year and from the date of completion of 240 days of work, the workman was entitled for regularization in service, but his services were not regularized and the workman was compelled to sign an illegal agreement and when he did not agree to sign the same, he was not allowed to join service from 22.11.1993 and such termination of the workman was without compliance of the mandatory provisions of Section 25-F of the Act and the termination amounts to retrenchment and the termination of the workman is illegal, arbitrary, malafide and contrary to the principles of natural justice and payment of retrenchment compensation in 1996 cannot cure such illegality and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1964 II LLJ-271 (Ambalal Shivlal Vs Vin (D.M.) and others), 1969 II LLJ-373 (Sivanandam Vs Press Superintendent, S. Railway, Madras), 1979 I LLJ-168 (B.M. Gupta Vs State of West Bengal), 1960 I LLJ – 251 (S.C.) (State of Bombay Vs Hospital Mazdoor Sabha) and 1964 I LLJ – 333 (S.C.) (Workmen of Subong Tea Estate Vs Subong Tea Estate).

11. On the other hand, it was submitted by the learned advocate for the Party No. 1 that the terms of the reference is vague and not specific and though, the reference is for adjudication of the legality or otherwise of the termination of the services of the workman, the alleged dated of such termination has not been mentioned in the schedule of reference and the date of the alleged termination is very crucial, in absence of which it is not possible for effective adjudication of the dispute and on that score, the reference is not maintainable. It was also

submitted by the learned advocate for the Party No. 1 that in the statement of claim filed by the workman also, there is no specific pleading as to when his services were terminated and on that count also, the reference is to be answered in the negative.

It was further submitted by the learned advocate for the Party No. 1 that though the workman was offered engagement on daily wages basis as per office order dated 31.01.1991, he did not join duty and as such, there is no question of termination of the services of the workman and even for the sake of argument, it is held that the workman worked as per office order dated 31.01.1991 on daily wages, the workman has not adduced any legal evidence on record to show that he had worked for 240 days in the preceding 12 months of the date of termination and the onus to prove such fact is on the workman, but he failed to discharge the onus by adducing necessary evidence and as such, he is not entitled for the benefits of the provisions of Section 25-F of the Act and as per the decision of the commissioner, the production activities of the unit was closed down and even though, the workman did not work after 1988, notice pay and retrenchment compensation was sent to him alongwith the retrenchment notice dated 09.02.1996 and Party No. 1 did not commit any illegality and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the Party No. 1 placed reliance on the decisions reported in the decisions reported in (2002) 3 SCC-25 (Range Forest Officer Vs. S.T. Hadimani), (2004) 8 SCC-195 (Municipal Corporation, Faridabad Vs. Siri Niwas), (2005) 8 SCC-481 (Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh), (2005) 8 SCC-750 (Surendra Nagar District Panchayat Vs. Dahyabhai Amarsingh), (2006) 2 SCC-716 (M.P. State Agro Industries Development Corpn. Ltd. Vs. S.C. Pandey), (2006) 5 SCC-173 (Municipal Council, Sujanpur Vs. Surinder Singh), (2006) 9 SCC-697 (Krishna Bhagyajal Nigam Ltd. vs. Mohd. Rafi), (2006) 9 SCC-132 (Surendranagar Distt. Panchayat Vs. Ganga Ben Laljibhai), (2006) 9 SCC-124 (Chief Engineer Ranjit Sagar Dam Vs. Sham Lal), (2006) 6 SCC-275 (Rajasthan Tourism Development Corporation Vs. Intejam Alizafri), (2006) 5 SCC-127 (Nagar Mahapalika Vs. State of U.P.), (2006) 1 SCC-106 (R.M. Yellati Vs. Asstt. Executive Engineer), (2006) 2 SCC-711 (State of M.P. Vs. Arjunlal Rajak), (2007) 13 SCC-343 (Ranip Nagar Palika Vs. Babuji Gabhaji Thakore), (2007) 12-172 (State of Maharashtra Vs. Dattatraya Digamber Birajdar), 2008 II CLR 1089 (State of Haryana Vs. Ramesh Kumar), (2008) 3 SCC-474 (BSNL Vs. Mahesh Chand), (2008) 5 SCC-171 (Municipal Corporation, Faridabad Vs. Durga Prasad) and (2009) 17 SCC-326 (Ajnala Cooperative Sugar Mills Ltd. Vs. Sukhraj Singh).

It is settled beyond doubt by the Hon'ble Apex Court in different judgments including the judgments cited by the learned advocate for the party No.1 that where the

workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it is for the claimant to lead evidence to that effect and the workman's affidavit is not sufficient evidence for that purpose.

Keeping in view the principles as mentioned above, now, the present case at hand is to be considered.

12. So far the first contention raised by the learned advocate for the party No.1 regarding the non-mention of the date of termination of the workman from services in the schedule of reference and in the statement of claim is concerned, admittedly, the alleged date of termination of the workman has not been mentioned in the schedule of reference. However, in the statement of claim, in paragraph 4, it has been mentioned by the workman that, "Immediately after the receipt of the notice dated 18.11.1993, the party No.1 had not allowed the party No.2 and his co-workers, who had issued notice to party No.1, to resume duty w.e.f. 20.11.1993." In paragraph 05 of the statement of claim, it has been mentioned that, "The party No.2 had approached the party No.1 on 21.11.1993 and subsequently on 22.01.1993, but work was not provided."

In the rejoinder, the workman has specifically in paragraphs 1 and 2 has pleaded that he was orally terminated from services w.e.f. 22.11.1993. From the materials on record, it is found that for non-mention of the date of the termination of the workman in the schedule of reference, it cannot be said that the reference is not maintainable. Hence, I find no force in the contention raised by the learned advocate for the Party No. 1 in that regard.

13. To prove that he had worked for 240 days in the preceding 12 months of the date of termination, the workman has given his own evidence on affidavit. Though, the workman has not produced any other evidence in support of his such claim, his evidence has been corroborated by the evidence of the witnesses no.1 and 2 of the party No.1. As already mentioned above, Amitabh Datta, the witness No.1 for party No.1 has stated that the workman worked continuously from 1991 to 1993. Khandeswar Pralhad Gondane, witness No.2 for the party No.1 has stated that the workman worked for more than 240 days in every calendar year.

14. Apart from the oral evidence, the documentary evidence produced by the party No.1 clinches the issue in favour of the workman. The party No.1 has produced and proved the notice of retrenchment dated 09/12/02/1996 issued to the workman as Ext. M-II. In Ext. M-II, it has been mentioned that the workman joined in February, 1991 and worked from February, 1991 to November, 1993 and he is entitled for retrenchment compensation for three years i.e. for 45 days at the rate of 15 days per year. So, it is clear from the materials on record that the workman in fact had

worked for more than 240 days in the preceding 12 calendar months of the date of his termination i.e. 22.11.1993. It is also found from the material on record that before the termination of the workman from services, the mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him. So, the termination of the workman from services amounts to retrenchment and such termination is illegal.

Applying the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocate for the workman to the case in hand, it is found that the issuance of the retrenchment notice as per Ext. M-II and sending of the demand draft towards retrenchment compensation and one month's wages on 09/10.02.1996 does not cure the illegality of termination of the services of the workman w.e.f. 22.11.1993.

15. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh) have been pleased to take into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (In charge Officer Vs. Shankar Setty.) and have been pleased to hold that:-

"In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager in 1991, about 23 years back. It is also found that he continued as such till 22.11.1993, when he was terminated from services by party no.1. It is also found that production and

marketing activities of the handmade paper unit, Wardha has been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 75,000 (Rupees seventy Five thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Baba Gopal Rao Somnath is illegal and unjustified. The workman is entitled for monetary compensation of Rs. 75,000 (Rupees seventy five thousand only) in lieu of reinstatement. He is not entitled for any other relief. The party no.1 is directed to pay the monetary compensation of Rs. 75,000 to the workman Shri Baba Gopal Rao Somnath within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 per cent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1191.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर हैंडमेड पेपर प्रोडक्शन खादी और विलेज इंस्ट्रीज कमीशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/167/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-42012/43/95-आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March , 2014

S.O. 1191.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/ NGP/167/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Director, Handmade Paper Production Khadi and Village Industrial Commission and their workman, which was received by the Central Government on 24-03-2014.

[No. L-42012/43/95-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/167/2002 Date: 03-03-2014.

Party No. 1 : The Director,
Handmade Paper Production
Marketing and Training Centre,
Khadi & Village Industries
Commission,
Wardha-442001.

Versus

Party No. 2 : Shri Kamlakar Narayanrao Sayankar,
H/o 17, P&T Colony,
Ward No. 15,
Near Shriniwas Colony,
Wardha – 442001.

AWARD

(Dated: 3rd March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) (“the Act” in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Handmade Paper Production and Training Centre and their workman, Shri Kamlakar Narayanrao Sayankar, for adjudication, as per letter No.L-42012/43/95-IR(DU) dated 27.03.1996, with the following schedule:-

“Whether the action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Kamlakar Narayanrao Sayankar was proper, justified and legal? If not, to what relief the workman is entitled to?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Kamlakar Narayanrao Sayankar (“the workman” in short), filed the statement of claim and the management of Handmade Paper Production and Training Centre (“Party No. 1” in short) filed their written statement.

The case of the workman as presented in the statement of claim is that Party No. 1 is a Central Government undertaking and is engaged in manufacturing and production of Handmade Papers and in the factory of Party No. 1 at Wardha, about 250 permanent employees were working and he was employed by Party No. 1 as a Store keeper cum clerk on 16.09.1991 and worked continuously and he was being paid @ Rs. 975 per month and though he himself and 17 other workers engaged by

Party No. 1 worked with Party No. 1 for several years, they were continued as temporary workers.

The further case of the workman is that since the date of his appointment, he worked continuously without any gap and he had put in 240 days of attendance in every year of service, but he was not made permanent in service and even though, he was doing the same work as done by the permanent workers, neither he was paid wages at par with the permanent employees nor given the benefits of bonus, E.S.I. Schemes and Provident Fund Scheme etc and as Party No. 1 did not issue the attendance-cum-Wage Card to him and the other 17 temporary workers, on 18.11.1993, all of them issued a notice through an advocate to Party No 1 to make them permanent and to give them all other benefits of permanent employees and soon after the receipt of the said notice, Party No. 1 did not allow him and other temporary workers to resume duty w.e.f. 20.11.1993 and he was informed by Party No. 1 through Shri A. Datta that he would be allowed to resume duty in case of his consenting to work under the Contractor, but he refused the offer, as because, he had already worked with Party No. 1 for years together and was entitled to be made permanent in service as per the representation dated 18.11.1993 and though he approached Party No. 1 on 21.11.1993 and 22.11.1993, he was not provided with work, so he alongwith the other 17 temporary workers on 22.11.1993 issued another notice, but inspite of the same, no work was provided to them, so they issued another notice through the advocate on 27.11.1993, but Party No. 1 neither replied to the notice nor provided him any work and thereafter also, he continuously approached and requested the Party No. 1 to provide him work, but Party No. 1 did not pay any heed to his request and after waiting for a long time, he approached the Labour Court, Nagpur by filing U.L.P.A. Complaint No. 765 of 1993 and the Labour Court vide its interim order, directed Party No. 1 to reinstate him in service, but no work was provided to him by Party No. 1 and Party No. 1 moved a revision application before the Industrial Court, Nagpur, against the order of the Labour Court raising objection of the Labour Court of having no jurisdiction to entertain and decide the matter pertaining to the establishment of the Central Government.

The further case of the workman is that out of the rest 17 retrenched workers, five workers approached the Asstt. Labour Commissioner (Central), Nagpur (“the ALC” in short) and the said five workers were provided with work by Party No. 1, so he withdrew the case filed by him in the Labour Court, Nagpur and approached the ALC by filing an application under Section 2-A of the Act and the five workers, who had been provided work by Party No. 1 after their approaching the ALC were juniors to him and the ALC issued notice to Party No. 1 and Party No. 1 did not agree for any amicable settlement, so there was failure of the conciliation proceedings and the ALC submitted the failure report to the Central Government.

It is also pleaded by the workman that Party No. 1 had issued experience certificate in his favour and before terminating his services, Party No.1 neither issued one month's notice nor paid notice pay in lieu of the notice or retrenchment compensation as provided under Section 25-F of the Act and therefore, his removal/retrenchment from services is illegal, improper and contrary to law and he is entitled for reinstatement in services with full back wages alongwith all monetary benefits of permanent employee, from the date of joining the service of Party No. 1 till the date of actual reinstatement and work is still available with Party No. 1 and Party No.1 engaged new persons on less wages for more production.

3. The Party No. 1 in the written statement has pleaded *inter alia* that it does not have any Managing Director, but only a Director of Handmade Paper Industry, which runs under Khadi and Village Industries Commission ("KVIC" in short) and KVIC is a statutory body, which was created by the statute, "Khadi & Village Industries Commission Act, 1956" and KVIC is functioning under the Ministry of Industry, Government of India and to achieve the object entrusted to KVIC, several Research and Training Centers were established including the J.B. Research Institute at Wardha, to provide artisan training courses for Handmade Paper Industries, but the unit so established at Wardha was handed over to a local institution, namely, "Khadi Gramodhyog Sangh, Manganwadi, Wardha, for the purpose of continuing the production activities and in 1984, the management of the said unit was taken over by it and it was decided to use the said unit as a Demonstration-cum-Extension Centre, for conducting experiments and testing etc. and arranging training of skilled workers and two technical persons were posted to look after the work and the unit finally started its Science & Technology (Research) work and for that some workers were engaged on daily wages, from November, 1984 and the work involved were of research and training and therefore not a continuous work and the workers were engaged as per requirements of work and after completion of the work, they were discontinued and none of the workers was engaged on continuous basis and the said unit functioned from 1984 to 1988 and when the unit was doing a prestigious research work of developing a process for making stiff, thick and hard water proof board by using completely waste banana stem, the workers stopped attending the work from 11.01.1988 and when enquiry was made for their non-attendance, it was informed that they wanted regular work without break and unless and until their such demand would be fulfilled, they would not join the work.

It is further pleaded by Party No. 1 that six of the daily wages workers lodged complaint with the ALC and worker Shankar Rao Ingle approached the Labour Court, Nagpur and a written statement was filed by KVIC raising

the question of jurisdiction and the said case continued till 1991 without adjudication and there was a joint discussion on 18.01.1991 between the six workers, who had made complaint to ALC and the in charge of the unit at Wardha and it was informed to the ALC that under Production Marketing and Training Programme of KVIC, the unit would start functioning from 01.02.1991, where all the six workers could be engaged on daily wages, as such, the ALC closed the case with the instruction to inform him about the appointment and appointment letters dated 28.01.1991 were issued to the said six workers including Shankar Rao Ingle, directing them to join work and out of them, five workers joined their duties and the appointment of Shankar Rao Ingle was made with the condition of withdrawal of the case filed by him, but Shankar Rao Ingle neither withdrew the case nor joined work and one of the conditions of appointment of the rest five workers was that they would enter into an agreement with its management and the finalization of the agreement took a long time and on 19.11.1993, a meeting was held with all the workers and in the presence of the then Director, Regional Office, KVIC, Wardha, the workers were requested to enter into the agreement, which was at par with another unit of Handmade Paper at Pune and the workers requested for two to three days time to give their consent, however, on 22.11.1993, the workers sent a letter informing their unwillingness to work on contract basis and that they would work only on daily wages basis and it was surprised to note that when the workers were provided work on daily wages basis in 1988, they demanded continuous work and when they were offered continuous work under Production Marketing and Training Programme in 1991, they refused to enter into an agreement and to work on contract basis, refusing to adhere to the condition of appointment and the workers could not be continued due to their refusal to enter into the agreement and their discontinuance from work was on their own accord and workers had stalled the Research Programme in 1988 and the unit had to remain close till 1991.

Party No. 1 has further pleaded that five workers approached the ALC (Central), Nagpur vide their complaint dated 22.11.1993, complaining that they were illegally terminated and the conciliation proceedings ended in failure and on submission of the failure reports by the ALC (Central), Nagpur, the Central Government refused to refer the cases of the said five workers for adjudication, by order dated 20.01.1995.

The further case of the Party No. 1 is that in the meantime, in the complaints filed by the workers in the Labour Court, Nagpur interim order was passed on 31.05.1994 directing it to reinstate the complainants and it filed revision before the Industrial Court against the order dated 31.05.1994 and on 17.08.1994, by way of pursis, the workers gave the undertaking before the Industrial Court

not to proceed with the complaint filed before the Labour Court and in view of the withdrawal of the complaint by the workers, it also withdrew the revision from the Industrial Court on 10.04.1995 and on the basis of the orders of the Ministry, the Directorate of Handmade Paper Industry, Central Office at Mumbai moved a note to the commission to close down the production and Marketing activities of the unit and subsequently, the commission in its 449th meeting dated 20.12.1995 decided to close down the activities and retrench all daily wage workers and on the basis of the commission's decision, all workers were served with the retrenchment notice alongwith the retrenchment compensation on 09.02.1996 and some workers, who had left the work as far back as 1993 were also given the retrenchment benefit.

The specific case of the Party No. 1 is that the workman was given appointment order on 16.09.1991 on temporary basis on condition that he will enter into an agreement and he did not work continuously since the date of his appointment and he worked intermittently on daily wages, as and when work was available and as the workers denied to enter into an agreement, the production activities were stopped and presently, it is engaged only in providing Artisan training and in the year 1993, there were only two permanent Handmade Paper staff and four JBCRI staff and at present, there are only one Handmade Paper staff and three permanent JBCRI staff and the unit at Wardha had to be closed from 11.01.1988 to 1991, as the daily wage workers left the work and the unit again started functioning from 01.02.1991 and at that time, the workman and other workers were given appointment letters with conditions that they have to enter into an agreement and the claim of the workman that he had put in continuous service of 240 days is false and the workman did not join the work after 22.11.1993 and as such, question of not allowing him to join work does not arise and the workman is not entitled to any relief.

4. In the rejoinder, the workman has denied the allegations made in the written statement and reiterated the facts mentioned in the statement of claim. It is further pleaded by the workman in the rejoinder that he was orally terminated w.e.f. 22.11.1993 and due to the intervention of the ALC, the workers were again allowed to resume their duties and thereafter, the workers demanded for their legitimate rights including payment of wages applicable to them and Party No. 1 with malafide intension decided to stop the work, instead of implementing the statutory law and he was provided with work from 1st February, 1991 as per the order issued to the workers including himself individually and he worked continuously till 22.11.1993 and he was orally terminated from services w.e.f. 22.11.1993, without service of one month's notice or payment of one month's pay in lieu of notice or retrenchment compensation and his oral termination is illegal, improper and contrary to law.

5. It is to be mentioned here that this reference alongwith references No. 160 to 166 and 169 to 178 of 2002 had been disposed of by this Tribunal by a common award dated 27.03.2007, directing the reinstatement of the workman and other petitioners. Being aggrieved by the said award, the Party No. 1 approached the Hon'ble High Court, Nagpur Bench in Writ Petition No. 4503/2007 and the Hon'ble High Court by order dated 25.08.2008 have been pleased to pass the following orders:-

"In view of the above, the impugned award dated 27.03.2007 passed by the Industrial Tribunal –cum-Labour Court, Nagpur in case Nos. 160/2002 to 167/2002 and 169/2002 to 178/2002 is quashed and set aside. The Tribunal is directed to allow the parties to lead further evidence, if they so desire and decided the cases thereafter. The Tribunal is directed to decide the reference in case Nos. 174/2002 to 178/2002 by common or separate awards as he deems fit and proper on the basis of the evidence led by the parties."

According to the direction of the Hon'ble High Court, the parties were given the chance of leading further evidence.

The workman, who had examined himself as a witness in support of his case did not adduce further evidence.

However, the Party No. 1 examined two witnesses, namely, Khandeswar Pralhad Gondane and Milind Wakode and produced documentary evidence in support of its case, besides the evidence already adduced.

6. The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim and rejoinder. The workman in his cross-examination has stated that he worked continuously from 23.09.1991 to 20.11.1993. He has denied the suggestion that he did not work for 240 days in any calendar year. The workman in his cross-examination has further stated that one registered letter, M-2 was sent to him, but he returned the same.

7. The first witness for Party No. 1 is Amitabh Datta, an Asstt. Director of Party No. 1. The evidence of witness, Amitabh is on affidavit. In his examination in chief on affidavit, in paragraph 8, this witness has stated that, "the party No.2 was given appointment vide letter 23.09.1991 on temporary basis. The appointment was for a fixed period until 31.12.1991, that party No. 2 however did not join the work." In paragraph 11 of his affidavit this witness has stated that, "However the unit was again started from 01.02.1991 and the Party No. 2 were served appointment letter dated 28.01.1991 to join, with conditions that they have to enter into an agreement. That when in 1993 the workers including Party No. 2 was asked to sign the agreement. Instead of signing the agreement the workers

including Party No. 2 sent letter dated 22.11.1993 informing that they are not ready to work on contract basis and will work on daily wages. That in absence of entering into the agreement which was the condition of appointment the workers could not be given work and they did not work after 22.11.1993. It is denied that party No.2 was reinstated in service from August, 94 to Jan. 1998. It is denied that the retrenchment dated 9.2.1996 was illegal, on the contrary though the Party No. 2 had not worked after 22.11.1993, nor was entitled to, he was given the benefits alongwith other workers. The retrenchment notice alongwith the compensation was sent to all the workers including the Party No. 2.”

In his cross-examination, this witness has stated that he was posted at Wardha from 1984 to 1995 and he knows the workman and the workman was working from 1985 at Wardha. In his cross-examination, this witness has categorically admitted that the workman had worked continuously from 1991 to 1993.

8. The witness no.2 examined by Party No. 1 is Khandeswar Pralhad Gondane. The examination-in-chief on affidavit of this witness is in the line of the stands taken by the Party No. 1 in the written statement. In paragraph 3 of his affidavit, this witness has stated that, “party no. 2 as well as other employees were never in continuous employment with Party No. 1. They had not completed 240 days with Party No.1. Despite this, they were offered with closure compensation alongwith all other legal dues.” Demolishing his own evidence given in the examination-in-chief, in his cross-examination, this witness has stated that he is working with Handmade Paper from 17.07.1992 and the workman was working with Handmade Paper prior to his joining in service and he was also working even after his joining service in 1992. This witness has categorically admitted that the workman worked for more than 240 days in every calendar year.

9. The third witness for Party No. 1 is Milind Wakode, the Divisional Director, Nagpur. In his examination-in-chief on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. This witness has further stated that the Handmade Paper Unit at Wardha had been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995 and retrenchment notice alongwith compensation was sent to all the workers by letter dated 09/10.02.1996. This witness has also proved the office copy of the termination order as Ext. M-II.

In his cross-examination, this witness has stated that Ext. M-II is dated 09.02.1996 and he cannot say the exact date of termination of the workman and Ext. M-III is the office copy of the order dated 31.01.1991 and Ext.M-III was issued after the engagement of the workman by the management and as per condition No.7 of Ext. M-III, the workman was to execute an agreement as prescribed by

the office of Handmade Paper, Khadi Board, Pune and as the workman did not agree to execute any agreement, he was not provided with work or made permanent and the workman was engaged as labourer on daily wages and he does not have any idea as to how the retrenchment compensation paid to the workman was calculated and as per Ext. M-II, retrenchment compensation was paid to the workman for 3 years i.e. for 45 days.

10. At the time of argument, it was submitted by the learned advocate for the workman that the workman was working with the Party No. 1 as a Store Keeper-cum-Clerk w.e.f. 16.09.1991 and from the date of his initial appointment, the workman worked continuously and he had completed more than 240 days of work in each calendar year and from the date of completion of 240 days of work, the workman was entitled for regularization in service, but his services were not regularized and the workman was compelled to sign an illegal agreement and when he did not agree to sign the same, he was not allowed to join service from 22.11.1993 and such termination of the workman was without compliance of the mandatory provisions of Section 25-F of the Act and the termination amounts to retrenchment and the termination of the workman is illegal, arbitrary, malafide and contrary to the principles of natural justice and payment of retrenchment compensation in 1996 cannot cure such illegality and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1964 II LLJ-271 [Ambalal Shivlal Vs. Vin (D.M.) and others], 1969 II LLJ-373 (Sivanandam Vs. Press Superintendent, S. Railway, Madras), 1979 I LLJ-168 (B.M. Gupta Vs. State of West Bengal), 1960 I LLJ – 251 (S.C.) (State of Bombay Vs. Hospital Mazdoor Sabha) and 1964 I LLJ – 333 (S.C.) (Workmen of Subong Tea Estate Vs. Subong Tea Estate).

11. On the other hand, it was submitted by the learned advocate for the Party No. 1 that the terms of the reference is vague and not specific and though, the reference is for adjudication of the legality or otherwise of the termination of the services of the workman, the alleged dated of such termination has not been mentioned in the schedule of reference and the date of the alleged termination is very crucial, in absence of which it is not possible for effective adjudication of the dispute and on that score, the reference is not maintainable. It was also submitted by the learned advocate for the Party No. 1 that in the statement of claim filed by the workman also, there is no specific pleading as to when his services were terminated and on that count also, the reference is to be answered in the negative.

It was further submitted by the learned advocate for the Party No. 1 that though the workman was offered

engagement on daily wages basis as per office order dated 31.01.1991, he did not join duty and as such, there is no question of termination of the services of the workman and even for the sake of argument, it is held that the workman worked as per office order dated 31.01.1991 on daily wages, the workman has not adduced any legal evidence on record to show that he had worked for 240 days in the preceding 12 months of the date of termination and the onus to prove such fact is on the workman, but he failed to discharge the onus by adducing necessary evidence and as such, he is not entitled for the benefits of the provisions of Section 25-F of the Act and as per the decision of the commissioner, the production activities of the unit was closed down and even though, the workman did not work after 1988, notice pay and retrenchment compensation was sent to him alongwith the retrenchment notice dated 09.02.1996 and Party No. 1 did not commit any illegality and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the Party No. 1 placed reliance on the decisions reported in the decisions reported in (2002) 3 SCC-25 (Range Forest Officer Vs. S.T. Hadimani), (2004) 8 SCC-195 (Municipal Corporation, Faridabad Vs. Siri Niwas), (2005) 8 SCC-481 (Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh), (2005) 8 SCC-750 (Surendra Nagar District Panchayat Vs. Dahyabhai Amarsingh), (2006) 2 SCC-716 (M.P. State Agro Industries Development Corpn. Ltd. Vs. S.C. Pandey), (2006) 5 SCC-173 (Municipal Council, Sujanpur Vs. Surinder Singh), (2006) 9 SCC-697 (Krishna Bhagyajal Nigam Ltd. Vs. Mohd. Rafi), (2006) 9 SCC-132 (Surendranagar Distt. Panchayat Vs. Ganga Ben Laljibhai), (2006) 9 SCC-124 Chief Engineer Ranjit Sagar Dam Vs. Sham Lal), (2006) 6 SCC-275 (Rajasthan Tourism Development Corporation Vs. Intejam Alizafri), (2006) 5 SCC-127 (Nagar Mahapalika Vs. State of U.P.), (2006) 1 SCC-106 (R.M. Yellati Vs. Asstt. Executive Engineer), (2006) 2 SCC-711 (State of M.P. Vs. Arjunlal Rajak), (2007) 13 SCC-343 (Ranip Nagar Palika Vs. Babuji Gabhaji Thakore), (2007) 12-172 (State of Maharashtra Vs. Dattatraya Digamber Birajdar), 2008 II CLR 1089 (State of Haryana Vs. Ramesh Kumar), (2008) 3 SCC-474 (BSNL Vs. Mahesh Chand), (2008) 5 SCC-171 (Municipal Corporation, Faridabad Vs. Durga Prasad) and (2009) 17 SCC-326 (Ajnala Cooperative Sugar Mills Ltd. Vs. Sukhraj Singh).

It is settled beyond doubt by the Hon'ble Apex Court in different judgments including the judgments cited by the learned advocate for the party No.1 that where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it is for the claimant to lead evidence to that effect and the workman's affidavit is not sufficient evidence for that purpose.

Keeping in view the principles as mentioned above, now, the present case at hand is to be considered.

12. So far the first contention raised by the learned advocate for the party No.1 regarding the non-mention of the date of termination of the workman from services in the schedule of reference and in the statement of claim is concerned, admittedly, the alleged date of termination of the workman has not been mentioned in the schedule of reference. However, in the statement of claim, in paragraph 4, it has been mentioned by the workman that, "Immediately after the receipt of the notice dated 18.11.1993, the party No.1 had not allowed the party No.2 and his co-workers, who had issued notice to party No.1, to resume duty w.e.f. 20.11.1993." In paragraph 05 of the statement of claim, it has been mentioned that, "The party No.2 had approached the party No.1 on 21.11.1993 and subsequently on 22.01.1993, but work was not provided."

In the rejoinder, the workman has specifically in paragraphs 1 and 2 has pleaded that he was orally terminated from services w.e.f. 22.11.1993. From the materials on record, it is found that for non-mention of the date of the termination of the workman in the schedule of reference, it cannot be said that the reference is not maintainable. Hence, I find no force in the contention raised by the learned advocate for the Party No. 1 in that respect.

13. To prove that he had worked for 240 days in the preceding 12 months of the date of termination, the workman has given his own evidence on affidavit. Though, the workman has not produced any other evidence in support of his such claim, his evidence has been corroborated by the evidence of the witnesses no.1 and 2 of the party No.1. As already mentioned above, Amitabh Datta, the witness No.1 for party No.1 has stated that the workman worked continuously from 1991 to 1993. Khandeswar Pralhad Gondane, witness No.2 for the party No.1 has stated that the workman worked for more than 240 days in every calendar year.

14. Apart from the oral evidence, the documentary evidence produced by the party No.1 clinches the issue in favour of the workman. The party No.1 has produced and proved the notice of retrenchment dated 09/12/02.1996 issued to the workman as Ext. M-II. In Ext. M-II, it has been mentioned that the workman joined in February, 1991 and worked from September, 1991 to November, 1993 and he is entitled for retrenchment compensation for two years i.e. for 30 days at the rate of 15 days per year. So, it is clear from the materials on record that the workman in fact had worked for more than 240 days in the preceding 12 calendar months of the date of his termination i.e. 22.11.1993. It is also found from the material on record that before the termination of the workman from services, the mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation

was given to him. So, the termination of the workman from services amounts to retrenchment and such termination is illegal.

Applying the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocate for the workman to the case in hand, it is found that the issuance of the retrenchment notice as per Ext. M-II and sending of the demand draft towards retrenchment compensation and one month's wages on 09/10.02.1996 does not cure the illegality of termination of the services of the workman w.e.f. 22.11.1993.

15. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh) have been pleased to take into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (In charge Officer Vs. Shankar Setty.) and have been pleased to hold that:-

“In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager in 1991, about 23 years back. It is also found that he continued as such till 22.11.1993, when he was terminated from services by party No.1. It is also found that production and marketing activities of the handmade paper unit, Wardha has been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in

my considered opinion, the compensation of Rs. 65,000/- (Rupees sixty-five thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Kamlakar Narayanrao Sayankar is illegal and unjustified. The workman is entitled for monetary compensation of Rs.65,000/- (Rupees sixty-five thousand only) in lieu of reinstatement. He is not entitled for any other relief. The party No. 1 is directed to pay the monetary compensation of Rs. 65,000/- to the workman Shri Kamlakar Narayanrao Sayankar within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 percent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1192.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर हैंडमेड पेपर प्रोडक्शन खादी और विलेज इंडस्ट्रीय कमीशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/169/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-42012/40/95-आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March , 2014

S.O. 1192.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/ NGP/169/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Director, Handmade Paper Production Khadi & Village Industrial Commission and their workmen, which was received by the Central Government on 24-03-2014.

[No. L-42012/40/95-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/167/2002

Date: 03-03-2014

Party No. 1 : The Director,
Handmade Paper Production
Marketing and Training Centre,
Khadi & Village Industries
Commission,
Wardha-442001

Versus

Party No. 2 : Shri Ashok Chandrabhanji
Mendhe, R/o Gorakshsha,
Ward No. 42,
Wardha – 442001

AWARD

(Dated: 3rd March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) (“the Act” in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Handmade Paper Production and Training Centre and their workman, Shri Ashok Chandrabhanji Mendhe , for adjudication, as per letter No.L-42012/40/95-IR(DU) dated 27.03.1996, with the following schedule:-

“Whether the action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Ashok Chandrabhanji Mendhe was proper, justified and legal? If not, to what relief the workman is entitled to?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Ashok Chandrabhanji Mendhe (‘the workman” in short), filed the statement of claim and the management of Handmade Paper Production and Training Centre (“Party No. 1” in short) filed their written statement.

The case of the workman as presented in the statement of claim is that Party No. 1 is a Central Government undertaking and is engaged in manufacturing and production of Handmade Papers and in the factory of Party No. 1 at Wardha, about 250 permanent employees were working and he was employed by Party No. 1 as a semiskilled worker on 31.01.1991 and worked continuously and he was being paid @ Rs. 675/- per month and though he himself and 17 other workers engaged by Party No. 1 worked with Party No. 1 for several years, they were continued as temporary workers.

The further case of the workman is that since the date of his appointment, he worked continuously without any gap and he had put in 240 days of attendance in every year of service, but he was not made permanent in service and even though, he was doing the same work as done by

the permanent workers, neither he was paid wages at par with the permanent employees nor given the benefits of bonus, E.S.I. Schemes and Provident Fund Scheme etc. and as Party No. 1 did not issue the attendance-cum-Wage Card to him and the other 17 temporary workers, on 18.11.1993, all of them issued a notice through an advocate to Party No. 1 to make them permanent and to give them all other benefits of permanent employees and soon after the receipt of the said notice, Party No. 1 did not allow him and other temporary workers to resume duty w.e.f. 20.11.1993 and he was informed by Party No.1 through Shri A. Datta that he would be allowed to resume duty in case of his consenting to work under the Contractor, but he refused the offer, as because, he had already worked with Party No. 1 for years together and was entitled to be made permanent in service as per the representation dated 18.11.1993 and though he approached Party No. 1 on 21.11.1993 and 22.11.1993, he was not provided with work, so he alongwith the other 17 temporary workers on 22.11.1993 issued another notice, but inspite of the same, no work was provided to them, so they issued another notice through the advocate on 27.11.1993, but Party No. 1 neither replied to the notice nor provided him any work and thereafter also, he continuously approached and requested the Party No. 1 to provide him work, but Party No. 1 did not pay any heed to his request and after waiting for a long time, he approached the Labour Court, Nagpur by filing U.L.P.A. Complaint No. 828 of 1993 and the Labour Court vide its interim order, directed Party No. 1 to reinstate him in service, but no work was provided to him by Party No. 1 and Party No. 1 moved a revision application before the Industrial Court, Nagpur, against the order of the Labour Court raising objection of the Labour Court of having no jurisdiction to entertain and decide the matter pertaining to the establishment of the Central Government.

The further case of the workman is that out of the rest 17 retrenched workers, five workers approached the Assstt. Labour Commissioner (Central), Nagpur (“the ALC” in short) and the said five workers were provided with work by Party No. 1, so he withdrew the case filed by him in the Labour Court, Nagpur and approached the ALC by filing an application under Section 2-A of the Act and the five workers, who had been provided work by Party No. 1 after their approaching the ALC were juniors to him and the ALC issued notice to Party No. 1 and Party No. 1 did not agree for any amicable settlement, so there was failure of the conciliation proceedings and the ALC submitted the failure report to the Central Government.

It is also pleaded by the workman that Party No. 1 had issued experience certificate in his favour and before terminating his services, Party No.1 neither issued one month’s notice nor paid notice pay in lieu of the notice or retrenchment compensation as provided under Section 25-F of the Act and therefore, his removal/retrenchment from services is illegal, improper and contrary to law and

he is entitled for reinstatement in services with full back wages alongwith all monetary benefits of permanent employee, from the date of joining the service of Party No. 1 till the date of actual reinstatement and work is still available with Party No. 1 and Party No.1 engaged new persons on less wages for more production.

3. The Party No. 1 in the written statement has pleaded inter-alia that it does not have any Managing Director, but only a Director of Handmade Paper Industry, which runs under Khadi and Village Industries Commission ("KVIC" in short) and KVIC is a statutory body, which was created by the statute, "Khadi & Village Industries Commission Act, 1956" and KVIC is functioning under the Ministry of Industry, Government of India and to achieve the object entrusted to KVIC, several Research and Training Centers were established including the J.B. Research Institute at Wardha, to provide artisan training courses for Handmade Paper Industries, but the unit so established at Wardha was handed over to a local institution, namely, "Khadi Gramodhyog Sangh, Manganwadi, Wardha, for the purpose of continuing the production activities and in 1984, the management of the said unit was taken over by it and it was decided to use the said unit as a demonstration-cum-extension Centre, for conducting experiments and testing etc. and arranging training of skilled workers and two technical persons were posted to look after the work and the unit finally started its Science & Technology (Research) work and for that some workers were engaged on daily wages, from November, 1984 and the work involved were of research and training and therefore not a continuous work and the workers were engaged as per requirements of work and after completion of the work, they were discontinued and none of the workers was engaged on continuous basis and the said unit functioned from 1984 to 1988 and when the unit was doing a prestigious research work of developing a process for making stiff, thick and hard water proof board by using completely waste banana stem, the workers stopped attending the work from 11.01.1988 and when enquiry was made for their non attendance, it was informed that they wanted regular work without break and unless and until their such demand would be fulfilled, they would not join the work.

It is further pleaded by Party No. 1 that six of the daily wages workers lodged complaint with the ALC and worker Shankar Rao Ingle approached the Labour court, Nagpur and a written statement was filed by KVIC raising the question of jurisdiction and the said case continued till 1991 without adjudication and there was a joint discussion on 18.01.1991 between the six workers, who had made complaint to ALC and the in charge of the unit at Wardha and it was informed to the ALC that under Production Marketing and Training Programme of KVIC, the unit would start functioning from 01.02.1991, where all the six workers could be engaged on daily wages, as such,

the ALC closed the case with the instruction to inform him about the appointment and appointment letters dated 28.01.1991 were issued to the said six workers including Shankar Rao Ingle, directing them to join work and out of them, five workers joined their duties and the appointment of Shankar Rao Ingle was made with the condition of withdrawal of the case filed by him, but Shankar Rao Ingle neither withdrew the case nor joined work and one of the conditions of appointment of the rest five workers was that they would enter into an agreement with its management and the finalization of the agreement took a long time and on 19.11.1993, a meeting was held with all the workers and in the presence of the then Director, Regional Office, KVIC, Wardha, the workers were requested to enter into the agreement, which was at par with another unit of Handmade Paper at Pune and the workers requested for two to three days time to give their consent, however, on 22.11.1993, the workers sent a letter informing their unwillingness to work on contract basis and that they would work only on daily wages basis and it was surprised to note that when the workers were provided work on daily wages basis in 1988, they demanded continuous work and when they were offered continuous work under Production Marketing and Training Programme in 1991, they refused to enter into an agreement and to work on contract basis, refusing to adhere to the condition of appointment and the workers could not be continued due to their refusal to enter into the agreement and their discontinuance from work was on their own accord and workers had stalled the Research Programme in 1988 and the unit had to remain close till 1991.

Party No. 1 has further pleaded that five workers approached the ALC (Central), Nagpur vide their complaint dated 22.11.1993, complaining that they were illegally terminated and the conciliation proceedings ended in failure and on submission of the failure reports by the ALC (Central), Nagpur, the Central Government refused to refer the cases of the said five workers for adjudication, by order dated 20.01.1995.

The further case of the Party No. 1 is that in the meantime, in the complaints filed by the workers in the Labour Court, Nagpur interim order was passed on 31.05.1994 directing it to reinstate the complainants and it filed revision before the Industrial Court against the order dated 31.05.1994 and on 17.08.1994, by way of pursis, the workers gave the undertaking before the Industrial Court not to proceed with the complaint filed before the Labour Court and in view of the withdrawal of the complaint by the workers, it also withdrew the revision from the Industrial Court on 10.04.1995 and on the basis of the orders of the Ministry, the Directorate of Handmade Paper Industry, Central Office at Mumbai moved a note to the commission to close down the production and Marketing activities of the unit and subsequently, the commission in its 449th meeting dated 20.12.1995 decided to close down

the activities and retrench all daily wage workers and on the basis of the commission's decision, all workers were served with the retrenchment notice alongwith the retrenchment compensation on 09.02.1996 and some workers, who had left the work as far back as 1993 were also given the retrenchment benefit.

The specific case of the Party No. 1 is that the workman was given appointment order on 31.01.1991 on temporary basis on condition that he will enter into an agreement and he did not work continuously since the date of his appointment and he worked intermittently on daily wages, as and when work was available and as the workers denied to enter into an agreement, the production activities were stopped and presently, it is engaged only in providing Artisan training and in the year 1993, there were only two permanent Handmade Paper staff and four JBCRI staff and at present, there are only one Handmade Paper staff and three permanent JBCRI staff and the unit at Wardha had to be closed from 11.01.1988 to 1991, as the daily wage workers left the work and the unit again started functioning from 01.02.1991 and at that time, the workman and other workers were given appointment letters with conditions that they have to enter into an agreement and the claim of the workman that he had put in continuous service of 240 days is false and the workman did not join the work after 22.11.1993 and as such, question of not allowing him to join work does not arise and the workman is not entitled to any relief.

4. In the rejoinder, the workman has denied the allegations made in the written statement and reiterated the facts mentioned in the statement of claim. It is further pleaded by the workman in the rejoinder that he was orally terminated w.e.f. 22.11.1993 and due to the intervention of the ALC, the workers were again allowed to resume their duties and thereafter, the workers demanded for their legitimate rights including payment of wages applicable to them and Party No. 1 with malafide intension decided to stop the work, instead of implementing the statutory law and he was provided with work from 1st, February, 1991 as per the order issued to the workers including himself individually and he worked continuously till 22.11.1993 and he was orally terminated from services w.e.f. 22.11.1993, without service of one month's notice or payment of one month's pay in lieu of notice or retrenchment compensation and his oral termination is illegal, improper and contrary to law.

5. It is to be mentioned here that this reference alongwith references No. 160 to 167 and 170 to 178 of 2002 had been disposed of by this Tribunal by a common award dated 27.03.2007, directing the reinstatement of the workman and other petitioners. Being aggrieved by the said award, the Party No. 1 approached the Hon'ble High Court, Nagpur Bench in Writ Petition No. 4503/2007 and

the Hon'ble High Court by order dated 25.08.2008 have been pleased to pass the following orders:-

"In view of the above, the impugned award dated 27.03.2007 passed by the Industrial Tribunal –cum-Labour Court, Nagpur in case Nos. 160/2002 to 167/2002 and 169/2002 to 178/2002 is quashed and set aside. The Tribunal is directed to allow the parties to lead further evidence, if they so desire and decided the cases thereafter. The Tribunal is directed to decide the reference in case Nos. 174/2002 to 178/2002 by common or separate awards as he deems fit and proper on the basis of the evidence led by the parties."

According to the direction of the Hon'ble High Court, the parties were given the chance of leading further evidence.

The workman, who had examined himself as a witness in support of his case did not adduce further evidence.

However, the Party No. 1 examined two witnesses, namely, Khandeswar Pralhad Gondane and Milind Wakode and produced documentary evidence in support of its case, besides the evidence already adduced.

6. The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim and rejoinder. The workman in his cross-examination has stated that he worked continuously from 23.09.1991 to 20.11.93. He has denied the suggestion that he did not work for 240 days in any calendar year. The workman in his cross-examination has further stated that one registered letter, M-2 was sent to him, but he returned the same.

7. The first witness for Party No. 1 is Amitabh Datta, an Asstt. Director of Party No. 1. The evidence of witness, Amitabh is on affidavit. In his examination in chief on affidavit, in paragraph 8, this witness has stated that, "the party No.2 was given appointment vide letter 23.09.1991 on temporary basis. The appointment was for a fixed period until 31.12.1991, that party No.2 however did not join the work." In paragraph 11 of his affidavit this witness has stated that, "However the unit was again started from 01.02.1991 and the Party No. 2 were served appointment letter dated 28.01.1991 to join, with conditions that they have to enter into an agreement. That when in 1993 the workers including Party No. 2 was asked to sign the agreement. Instead of signing the agreement the workers including Party No. 2 sent letter dated 22.11.1993 informing that they are not ready to work on contract basis and will work on daily wages. That in absence of entering into the agreement which was the condition of appointment the workers could not be given work and they did not work after 22.11.1993. It is denied that party No.2 was reinstated in service from August,94 to Jan. 1998. It is denied that the retrenchment dated 9.2.1996 was illegal, on the contrary

though the Party No. 2 had not worked after 22.11.1993, nor was entitled to, he was given the benefits alongwith other workers. The retrenchment notice alongwith the compensation was sent to all the workers including the Party No. 2.”

In his cross-examination, this witness has stated that he was posted at Wardha from 1984 to 1995 and he knows the workman and the workman was working from 1985 at Wardha. In his cross-examination, this witness has categorically admitted that the workman had worked continuously from 1991 to 1993.

8. The witness no. 2 examined by Party No. 1 is Khandeswar Pralhad Gondane. The examination-in-chief on affidavit of this witness is in the line of the stands taken by the Party No. 1 in the written statement. In paragraph 3 of his affidavit, this witness has stated that, “party no. 2 as well as other employees were never in continuous employment with Party No. 1. They had not completed 240 days with Party No.1. Despite this, they were offered with closure compensation alongwith all other legal dues.” Demolishing his own evidence given in the examination-in-chief, in his cross-examination, this witness has stated that he is working with Handmade Paper from 17.07.1992 and the workman was working with Handmade Paper prior to his joining in service and he was also working even after his joining service in 1992. This witness has categorically admitted that the workman worked for more than 240 days in every calendar year.

9. The third witness for Party No. 1 is Milind Wakode, the Divisional Director, Nagpur. In his examination-in-chief on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. This witness has further stated that the Handmade Paper Unit at Wardha had been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995 and retrenchment notice alongwith compensation was sent to all the workers by letter dated 09/10.02.1996. This witness has also proved the office copy of the termination order as Ext. M-II.

In his cross-examination, this witness has stated that Ext. M-II is dated 09.02.1996 and he cannot say the exact date of termination of the workman and Ext. M-III is the office copy of the order dated 31.01.1991 and Ext. M-III was issued after the engagement of the workman by the management and as per condition No.7 of Ext. M-III, the workman was to execute an agreement as prescribed by the office of Handmade Paper, Khadi Board, Pune and as the workman did not agree to execute any agreement, he was not provided with work or made permanent and the workman was engaged as labourer on daily wages and he does not have any idea as to how the retrenchment compensation paid to the workman was calculated and as per Ext. M-II, retrenchment compensation was paid to the workman for 3 years i.e. for 45 days.

10. At the time of argument, it was submitted by the learned advocate for the workman that the workman was working with the Party No. 1 as a semiskilled worker w.e.f. 31.01.1991 and from the date of his initial appointment, the workman worked continuously and he had completed more than 240 days of work in each calendar year and from the date of completion of 240 days of work, the workman was entitled for regularization in service, but his services were not regularized and the workman was compelled to sign an illegal agreement and when he did not agree to sign the same, he was not allowed to join service from 22.11.1993 and such termination of the workman was without compliance of the mandatory provisions of Section 25-F of the Act and the termination amounts to retrenchment and the termination of the workman is illegal, arbitrary, malafide and contrary to the principles of natural justice and payment of retrenchment compensation in 1996 cannot cure such illegality and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1964 II LLJ-271 (Ambalal Shivlal Vs Vin (D.M.) and others), 1969 II LLJ-373 (Sivanandam Vs Press Superintendent, S. Railway, Madras), 1979 I LLJ-168 (B.M. Gupta Vs State of West Bengal), 1960 I LLJ – 251 (S.C.) (State of Bombay Vs Hospital Mazdoor Sabha) and 1964 I LLJ – 333 (S.C.) (Workmen of Subong Tea Estate Vs Subong Tea Estate).

11. On the other hand, it was submitted by the learned advocate for the Party No. 1 that the terms of the reference is vague and not specific and though, the reference is for adjudication of the legality or otherwise of the termination of the services of the workman, the alleged dated of such termination has not been mentioned in the schedule of reference and the date of the alleged termination is very crucial, in absence of which it is not possible for effective adjudication of the dispute and on that score, the reference is not maintainable. It was also submitted by the learned advocate for the Party No. 1 that in the statement of claim filed by the workman also, there is no specific pleading as to when his services were terminated and on that count also, the reference is to be answered in the negative.

It was further submitted by the learned advocate for the Party No. 1 that though the workman was offered engagement on daily wages basis as per office order dated 31.01.1991, he did not join duty and as such, there is no question of termination of the services of the workman and even for the sake of argument, it is held that the workman worked as per office order dated 31.01.1991 on daily wages, the workman has not adduced any legal evidence on record to show that he had worked for 240 days in the preceding 12 months of the date of termination

and the onus to prove such fact is on the workman, but he failed to discharge the onus by adducing necessary evidence and as such, he is not entitled for the benefits of the provisions of Section 25-F of the Act and as per the decision of the commissioner, the production activities of the unit was closed down and even though, the workman did not work after 1988, notice pay and retrenchment compensation was sent to him alongwith the retrenchment notice dated 09.02.1996 and Party No. 1 did not commit any illegality and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the Party No. 1 placed reliance on the decisions reported in the (2002) 3 SCC-25 (Range Forest Officer Vs. S.T. Hadimani), (2004) 8 SCC-195 (Municipal Corporation, Faridabad Vs. Sri Niwas), (2005) 8 SCC-481 (Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh), (2005) 8 SCC-750 (Surendra Nagar District Panchayat Vs. Dahanbhaji Amarsingh), (2006) 2 SCC-716 (M.P. State Agro Industries Development Corp. Ltd. vs. S.C. Pandey), (2006) 5 SCC-173 (Municipal Council, Sujanpur vs. Surinder Singh), (2006) 9 SCC-697 (Krishna Bhagyajal Nigam Ltd. vs. Mohd. Rafi), (2006) 9 SCC-132 (Surendranagar Distt. Panchayat vs. Ganga Ben Laljibhai), (2006) 9 SCC-124 (Chief Engineer Ranjit Sagar Dam vs. Sham Lal), (2006) 6 SCC-275 (Rajasthan Tourism Development Corporation vs. Intejam Alizafri), (2006) 5 SCC-127 (Nagar Mahapalika vs. State of U.P.), (2006) 1 SCC-106 (R.M. Yellati vs. Asstt. Executive Engineer), (2006) 2 SCC-711 (State of M.P. vs. Arjunlal Rajak), (2007) 13 SCC-343 (Ranip Nagar Palika vs. Babuji Gabhaji Thakore), (2007) 12-172 (State of Maharashtra vs. Dattatraya Digamber Birajdar), 2008 II CLR 1089 (State of Haryana vs. Ramesh Kumar), 92008) 3 SCC-474 (BSNL vs. Mahesh Chand), (2008) 5 SCC-171 (Municipal Corporation, Faridabad vs. Durga Prasad) and (2009) 17 SCC-326 (Ajnala Cooperative Sugar Mills Ltd. vs. Sukhraj Singh).

It is settled beyond doubt by the Hon'ble Apex Court in different judgments including the judgments cited by the learned advocate for the party No.1 that where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it is for the claimant to lead evidence to that effect and the workman's affidavit is not sufficient evidence for that purpose.

Keeping in view the principles as mentioned above, now, the present case at hand is to be considered.

12. So far the first contention raised by the learned advocate for the party No.1 regarding the non-mention of the date of termination of the workman from services in the schedule of reference and in the statement of claim is concerned, admittedly, the alleged date of termination of the workman has not been mentioned in the schedule of reference. However, in the statement of claim, in paragraph

4, it has been mentioned by the workman that, "Immediately after the receipt of the notice dated 18.11.1993, the party No.1 had not allowed the party No.2 and his co-workers, who had issued notice to party No.1, to resume duty w.e.f. 20.11.1993." In paragraph 05 of the statement of claim, it has been mentioned that, "The party No.2 had approached the party No.1 on 21.11.1993 and subsequently on 22.01.1993, but work was not provided."

In the rejoinder, the workman has specifically in paragraphs 1 and 2 has pleaded that he was orally terminated from services w.e.f. 22.11.1993. From the materials on record, it is found that for non-mention of the date of the termination of the workman in the schedule of reference, it cannot be said that the reference is not maintainable. Hence, I find no force in the contention raised by the learned advocate for the Party No. 1 in that respect.

13. To prove that he had worked for 240 days in the preceding 12 months of the date of termination, the workman has given his own evidence on affidavit. Though, the workman has not produced any other evidence in support of his such claim, his evidence has been corroborated by the evidence of the witnesses no.1 and 2 of the party No.1. As already mentioned above, Amitabh Datta, the witness No.1 for party No.1 has stated that the workman worked continuously from 1991 to 1993. Khandeswar Pralhad Gondane, witness No.2 for the party No.1 has stated that the workman worked for more than 240 days in every calendar year.

14. Apart from the oral evidence, the documentary evidence produced by the party No.1 clinches the issue in favour of the workman. The party No.1 has produced and proved the notice of retrenchment dated 09/12/02/1996 issued to the workman as Ext. M-II. In Ext. M-II, it has been mentioned that the workman joined in February, 1991 and worked from February, 1991 to November, 1993 and he is entitled for retrenchment compensation for three years i.e. for 45 days at the rate of 15 days per year. So, it is clear from the materials on record that the workman in fact had worked for more than 240 days in the preceding 12 calendar months of the date of his termination i.e. 22.11.1993. It is also found from the material on record that before the termination of the workman from services, the mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him. So, the termination of the workman from services amounts to retrenchment and such termination is illegal.

Applying the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocate for the workman to the case in hand, it is found that the issuance of the retrenchment notice as per Ext. M-II and

sending of the demand draft towards retrenchment compensation and one month's wages on 09/10.02.1996 does not cure the illegality of termination of the services of the workman w.e.f. 22.11.1993.

15. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh) have been pleased to take into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal Council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (In charge Officer Vs. Shankar Setty.) and have been pleased to hold that:-

"In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the Labour Court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager in 1991, about 23 years back. It is also found that he continued as such till 22.11.1993, when he was terminated from services by party no.1. It is also found that production and marketing activities of the handmade paper unit, Wardha has been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 75,000 (Rupees seventy-five thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Ashok Chandrabhanji Mendhe is illegal and unjustified. The workman is entitled for monetary compensation of Rs. 75,000 (Rupees seventy-five thousand only) in lieu of reinstatement. He is not entitled for any other relief. The party no.1 is directed to pay the monetary compensation of Rs. 75,000 to the workman Shri Ashok Chandrabhanji Mendhe within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 per cent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1193.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर हैंडमेड पेपर प्रोडक्शन खादी एण्ड विलेज इंडस्ट्रीज कमीशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/170/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-42012/38/95-आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March, 2014

S.O. 1193.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/ NGP/170/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Director, Handmade Paper Production Khadi & Village Industrial Commission and their workman, which was received by the Central Government on 24-03-2014.

[No. L-42012/38/95-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/170/2002

Date: 03-03-2014.

Party No. 1 : The Director,
Handmade Paper Production
Marketing and Training Centre,
Khadi & Village Industries
Commission,
Wardha-442001.

Versus

Party No. 2 : Shri Nanda Madhukar Rao Doel
R/o Telengpur,
Ward No. 33,
Teh. & Distt.-Wardha – 442001.

AWARD

(Dated: 3rd March, 2014)

In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) (“the Act” in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Handmade Paper Production and Training Centre and their workman, Nanda Madhukar Rao Doel, for adjudication, as per letter No.L-42012/38/95-IR(DU) dated 27.03.1996, with the following schedule:-

“Whether the action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Nanda Madhukar Rao Doel is proper, justified and legal? If not, to what relief the workman is entitled to?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Nanda Madhukar Rao Doel (“the workman” in short), filed the statement of claim and the management of Handmade Paper Production and Training Centre (“Party No. 1” in short) filed their written statement.

The case of the workman as presented in the statement of claim is that Party No. 1 is a Central Government undertaking and is engaged in manufacturing and production of Handmade Papers and in the factory of Party No. 1 at Wardha, about 250 permanent employees were working and she was employed by Party No. 1 as a semiskilled worker on 01.01.1986 and worked continuously and she was being paid @ Rs. 675 per month and though she herself and 17 other workers engaged by Party No. 1 worked with Party No. 1 for several years, they were continued as temporary workers.

The further case of the workman is that since the date of her appointment, she worked continuously without any gap and she had put in 240 days of attendance in every year of service, but she was not made permanent in service and even though, she was doing the same work as

done by the permanent workers, neither she was paid wages at par with the permanent employees nor given the benefits of bonus, E.S.I. Schemes and Provident Fund Scheme etc and as Party No. 1 did not issue the Attendance-cum-Wage Card to her and the other 17 temporary workers, on 18.11.1993, all of them issued a notice through an advocate to Party No 1 to make them permanent and to give them all other benefits of permanent employees and soon after the receipt of the said notice, Party No. 1 did not allow her and other temporary workers to resume duty w.e.f. 20.11.1993 and she was informed by Party No1 through Shri A. Datta that she would be allowed to resume duty in case of her consenting to work under the Contractor, but she refused the offer, as because, she had already worked with Party No. 1 for years together and was entitled to be made permanent in service as per the representation dated 18.11.1993 and though she approached Party No. 1 on 21.11.1993 and 22.11.1993, she was not provided with work, so she alongwith the other 17 temporary workers on 22.11.1993 issued another notice, but in spite of the same, no work was provided to them, so they issued another notice through the advocate on 27.11.1993, but Party No. 1 neither replied to the notice nor provided him any work and thereafter also, she continuously approached and requested the Party No. 1 to provide her work, but Party No. 1 did not pay any heed to her request and after waiting for a long time, she approached the Labour Court, Nagpur by filing U.L.P.A. Complaint No. 829 of 1993 and the Labour Court vide its interim order, directed Party No. 1 to reinstate her in service, but no work was provided to her by Party No. 1 and Party No. 1 moved a revision application before the Industrial Court, Nagpur, against the order of the Labour Court raising objection of the Labour Court of having no jurisdiction to entertain and decide the matter pertaining to the establishment of the Central Government.

The further case of the workman is that out of the rest 17 retrenched workers, five workers approached the Asstt. Labour Commissioner (Central), Nagpur (“the ALC” in short) and the said five workers were provided with work by Party No. 1, so she withdrew the case filed by her in the Labour Court, Nagpur and approached the ALC by filing an application under Section 2-A of the Act and the five workers, who had been provided work by Party No. 1 after their approaching the ALC were juniors to her and the ALC issued notice to Party No. 1 and Party No. 1 did not agree for any amicable settlement, so there was failure of the conciliation proceedings and the ALC submitted the failure report to the Central Government.

It is also pleaded by the workman that Party No. 1 had issued experience certificate in her favour and before terminating her services, Party No.1 neither issued one month's notice nor paid notice pay in lieu of the notice or retrenchment compensation as provided under Section 25-F of the Act and therefore, her removal/retrenchment

from services is illegal, improper and contrary to law and she is entitled for reinstatement in services with full back wages alongwith all monetary benefits of permanent employee, from the date of joining the service of Party No. 1 till the date of actual reinstatement and work is still available with Party No. 1 and Party No.1 engaged new persons on less wages for more production.

3. The Party No. 1 in the written statement has pleaded inter-alia that it does not have any Managing Director, but only a Director of Handmade Paper Industry, which runs under Khadi and Village Industries Commission ("KVIC" in short) and KVIC is a statutory body, which was created by the statute, "Khadi & Village Industries commission Act, 1956" and KVIC is functioning under the Ministry of Industry, Government of India and to achieve the object entrusted to KVIC, several Research and Training Centers were established including the J.B. Research Institute at Wardha, to provide artisan training courses for Handmade Paper Industries, but the unit so established at Wardha was handed over to a local institution, namely, "Khadi Gramodhyog Sangh, Manganwadi, Wardha, for the purpose of continuing the production activities and in 1984, the management of the said unit was taken over by it and it was decided to use the said unit as a demonstration-cum-extension Centre, for conducting experiments and testing etc. and arranging training of skilled workers and two technical persons were posted to look after the work and the unit finally started its Science & Technology (Research) work and for that some workers were engaged on daily wages, from November, 1984 and the work involved were of research and training and therefore not a continuous work and the workers were engaged as per requirements of work and after completion of the work, they were discontinued and none of the workers was engaged on continuous basis and the said unit functioned from 1984 to 1988 and when the unit was doing a prestigious research work of developing a process for making stiff, thick and hard water proof board by using completely waste banana stem, the workers stopped attending the work from 11.01.1988 and when enquiry was made for their non attendance, it was informed that they wanted regular work without break and unless and until their such demand would be fulfilled, they would not join the work.

It is further pleaded by Party No. 1 that six of the daily wages workers lodged complaint with the ALC and worker Shankar Rao Ingle approached the Labour court, Nagpur and a written statement was filed by KVIC raising the question of jurisdiction and the said case continued till 1991 without adjudication and there was a joint discussion on 18.01.1991, between the six workers, who had made complaint to ALC and the in charge of the unit at Wardha and it was informed to the ALC that under Production Marketing and Training Programme of KVIC, the unit would start functioning from 01.02.1991, where all

the six workers could be engaged on daily wages, as such, the ALC closed the case with the instruction to inform him about the appointment and appointment letters dated 28.01.1991 were issued to the said six workers including Shankar Rao Ingle, directing them to join work and out of them, five workers joined their duties and the appointment of Shankar Rao Ingle was made with the condition of withdrawal of the case filed by him, but Shankar Rao Ingle neither withdrew the case nor joined work and one of the conditions of the appointment of the rest five workers was that they would enter into an agreement with its management and the finalization of the agreement took a long time and on 19.11.1993, a meeting was held with all the workers and in the presence of the then Director, Regional Office, KVIC, Wardha, the workers were requested to enter into the agreement, which was at par with another unit of Handmade Paper at Pune and the workers requested for two to three days time to give their consent, however, on 22.11.1993, the workers sent a letter informing their unwillingness to work on contract basis and that they would work only on daily wages basis and it was surprised to note that when the workers were provided work on daily wages basis in 1988, they demanded continuous work and when they were offered continuous work under Production Marketing and Training Programme in 1991, they refused to enter into an agreement and to work on contract basis, refusing to adhere to the condition of appointment and the workers could not be continued due to their refusal to enter into the agreement and their discontinuance from work was on their own accord and workers had stalled the Research Programme in 1988 and the unit had to remain close till 1991.

Party No. 1 has further pleaded that five workers approached the ALC (Central), Nagpur vide their complaint dated 22.11.1993, complaining that they were illegally terminated and the conciliation proceedings ended in failure and on submission of the failure reports by the ALC (Central), Nagpur, the Central Government refused to refer the cases of the said five workers for adjudication, by order dated 20.01.1995.

The further case of the Party No. 1 is that in the meantime, in the complaints filed by the workers in the Labour Court, Nagpur interim order was passed on 31.05.1994 directing it to reinstate the complainants and it filed revision before the Industrial Court against the order dated 31.05.1994 and on 17.08.1994, by way of pursis, the workers gave the undertaking before the Industrial Court not to proceed with the complaint filed before the Labour Court and in view of the withdrawal of the complaint by the workers, it also withdrew the revision from the Industrial Court on 10.04.1995 and on the basis of the orders of the Ministry, the Directorate of Handmade Paper Industry, Central Office at Mumbai moved a note to the commission to close down the production and Marketing activities of the unit and subsequently, the commission in

its 449th meeting dated 20.12.1995 decided to close down the activities and retrench all daily wage workers and on the basis of the commission's decision, all workers were served with the retrenchment notice alongwith the retrenchment compensation on 09.02.1996 and some workers, who had left the work as far back as 1993 were also given the retrenchment benefit.

The specific case of the Party No. 1 is that the workman was not in its employment since 01.01.1986 and she did not work continuously since the date of her appointment and she worked intermittently on daily wages, as and when work was available and as the workers denied to enter into an agreement, the production activities were stopped and presently, it is engaged only in providing Artisan training and in the year 1993, there were only two permanent Handmade Paper staff and four JBCRI staff and at present, there are only one Handmade Paper staff and three permanent JBCRI staff and the unit at Wardha had to be closed from 11.01.1988 to 1991, as the daily wage workers left the work and the unit again started functioning from 01.02.1991 and at that time, the workman and other workers were given appointment letters with conditions that they have to enter into an agreement and the claim of the workman that she had put in continuous service of 240 days is false and the workman did not join the work as per the appointment letter dated 31.01.1991 and as such, question of not allowing her to join work does not arise and the workman is not entitled to any relief.

4. In the rejoinder, the workman has denied the allegations made in the written statement and reiterated the facts mentioned in the statement of claim. It is further pleaded by the workman in the rejoinder that she was orally terminated w.e.f. 22.11.1993 and due to the intervention of the ALC, the workers were again allowed to resume their duties and thereafter, the workers demanded for their legitimate rights including payment of wages applicable to them and Party No. 1 with malafide intension decided to stop the work, instead of implementing the statutory law and she was provided with work from 1st February, 1991 as per the order issued to the workers including herself individually and she worked continuously till 22.11.1993 and she was orally terminated from services w.e.f. 22.11.1993, without service of one month's notice or payment of one month's pay in lieu of notice or retrenchment compensation and her oral termination is illegal, improper and contrary to law.

5. It is to be mentioned here that this reference alongwith references No. 160 to 167, 169 and 171 to 178 of 2002 had been disposed of by this Tribunal by a common award dated 27.03.2007, directing the reinstatement of the workman and other petitioners. Being aggrieved by the said award, the Party No. 1 approached the Hon'ble High Court, Nagpur Bench in Writ Petition No. 4503/2007 and the Hon'ble High Court by order dated 25.08.2008 have been pleased to pass the following orders:-

"In view of the above, the impugned award dated 27.03.2007 passed by the Industrial Tribunal –cum-Labour Court, Nagpur in case Nos. 160/2002 to 167/2002 and 169/2002 to 178/2002 is quashed and set aside. The Tribunal is directed to allow the parties to lead further evidence, if they so desire and decided the cases thereafter. The Tribunal is directed to decide the reference in case Nos. 174/2002 to 178/2002 by common or separate awards as he deems fit and proper on the basis of the evidence led by the parties."

According to the direction of the Hon'ble High Court, the parties were given the chance of leading further evidence.

The workman, who had examined herself as a witness in support of her case did not adduce further evidence.

However, the Party No. 1 examined two witnesses, namely, Khandeswar Pralhad Gondane and Milind Wakode and produced documentary evidence in support of its case, besides the evidence already adduced.

6. The workman in her evidence on affidavit has reiterated the facts mentioned in the statement of claim and rejoinder. The workman in her cross-examination has stated that she worked continuously from 1986 to November, 1993. She has denied the suggestion that she did not work for 240 days in any calendar year.

7. The first witness for Party No. 1 is Amitabh Datta, an Asstt. Director of Party No. 1. The evidence of witness, Amitabh is on affidavit. In his examination in chief on affidavit, in paragraph 8, this witness has stated that, "the Party No. 2 was given appointment vide letter 23.09.1991 on temporary basis. The appointment was for a fixed period until 31.12.1991, that Party No. 2 however did not join the work." In paragraph 11 of his affidavit this witness has stated that, "However the unit was again started from 01.02.1991 and the Party No. 2 were served appointment letter dated 28.01.1991 to join, with conditions that they have to enter into an agreement. That when in 1993 the workers including Party No. 2 was asked to sign the agreement. Instead of signing the agreement the workers including Party No. 2 sent letter dated 22.11.1993 informing that they are not ready to work on contract basis and will work on daily wages. That in absence of entering into the agreement which was the condition of appointment the workers could not be given work and they did not work after 22.11.1993. It is denied that Party No. 2 was reinstated in service from August, 94 to Jan. 1998. It is denied that the retrenchment dated 9.2.1996 was illegal, on the contrary though the Party No. 2 had not worked after 22.11.1993, nor was entitled to, he was given the benefits alongwith other workers. The retrenchment notice alongwith the compensation was sent to all the workers including the Party No. 2."

In his cross-examination, this witness has stated that he was posted at Wardha from 1984 to 1995 and he knows the workman and the workman was working from 1985 at Wardha. In his cross-examination, this witness has categorically admitted that the workman had worked continuously from 1991 to 1993.

8. The witness No. 2 examined by Party No. 1 is Khandeswar Pralhad Gondane. The examination-in-chief on affidavit of this witness is in the line of the stands taken by the Party No. 1 in the written statement. In paragraph 3 of his affidavit, this witness has stated that, "Party No. 2 as well as other employees were never in continuous employment with Party No. 1. They had not completed 240 days with Party No. 1. Despite this, they were offered with closure compensation alongwith all other legal dues." Demolishing his own evidence given in the examination-in-chief, in his cross-examination, this witness has stated that he is working with Handmade Paper from 17.07.1992 and the workman was working with Handmade Paper prior to his joining in service and he was also working even after his joining service in 1992. This witness has categorically admitted that the workman worked for more than 240 days in every calendar year.

9. The third witness for Party No. 1 is Milind Wakode, the Divisional Director, Nagpur. In his examination-in-chief on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. This witness has further stated that the Handmade Paper Unit at Wardha had been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995 and retrenchment notice alongwith compensation was sent to all the workers by letter dated 09/10.02.1996. This witness has also proved the office copy of the termination order as Ext. M-II.

In his cross-examination, this witness has stated that Ext. M-II is dated 09.02.1996 and he cannot say the exact date of termination of the workman and Ext. M-III is the office copy of the order dated 31.01.1991 and Ext. M-III was issued after the engagement of the workman by the management and as per condition No.7 of Ext. M-III, the workman was to execute an agreement as prescribed by the office of Handmade Paper, Khadi Board, Pune and as the workman did not agree to execute any agreement, he was not provided with work or made permanent and the workman was engaged as labourer on daily wages and he does not have any idea as to how the retrenchment compensation paid to the workman was calculated and as per Ext. M-II, retrenchment compensation was paid to the workman for 3 years i.e. for 45 days.

10. At the time of argument, it was submitted by the learned advocate for the workman that the workman was working with the Party No. 1 as an semiskilled labourer w.e.f. 01.01.1986 and from the date of her initial appointment, the workman worked continuously and she had completed more than 240 days of work in each calendar year and from

the date of completion of 240 days of work, the workman was entitled for regularization in service, but her services were not regularized and the workman was compelled to sign an illegal agreement and when she did not agree to sign the same, she was not allowed to join service from 22.11.1993 and such termination of the workman was without compliance of the mandatory provisions of Section 25-F of the Act and the termination amounts to retrenchment and the termination of the workman is illegal, arbitrary, malafide and contrary to the principles of natural justice and payment of retrenchment compensation in 1996 cannot cure such illegality and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1964 II LLJ-271 (Ambalal Shivlal Vs. Vin (D.M.) and others), 1969 II LLJ-373 (Sivanandam Vs. Press Superintendent, S. Railway, Madras), 1979 I LLJ-168 (B.M. Gupta Vs. State of West Bengal), 1960 I LLJ – 251 (S.C.) (State of Bombay Vs. Hospital Mazdoor Sabha) and 1964 I LLJ – 333 (S.C.) (Workmen of Subong Tea Estate Vs. Subong Tea Estate).

11. On the other hand, it was submitted by the learned advocate for the Party No. 1 that the terms of the reference is vague and not specific and though, the reference is for adjudication of the legality or otherwise of the termination of the services of the workman, the alleged dated of such termination has not been mentioned in the schedule of reference and the date of the alleged termination is very crucial, in absence of which it is not possible for effective adjudication of the dispute and on that score, the reference is not maintainable. It was also submitted by the learned advocate for the Party No. 1 that in the statement of claim filed by the workman also, there is no specific pleading as to when her services were terminated and on that count also, the reference is to be answered in the negative.

It was further submitted by the learned advocate for the Party No. 1 that though the workman was offered engagement on daily wages basis as per office order dated 31.01.1991, she did not join duty and as such, there is no question of termination of the services of the workman and even for the sake of argument, it is held that the workman worked as per office order dated 31.01.1991 on daily wages, the workman has not adduced any legal evidence on record to show that she had worked for 240 days in the preceding 12 months of the date of termination and the onus to prove such fact is on the workman, but she failed to discharge the onus by adducing necessary evidence and as such, she is not entitled for the benefits of the provisions of Section 25-F of the Act and as per the decision of the commissioner, the production activities of the unit was closed down and even though, the workman did not work after 1988, notice pay and retrenchment

compensation was sent to her alongwith the retrenchment notice dated 09.02.1996 and Party No. 1 did not commit any illegality and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the Party No. 1 placed reliance on the decisions reported in the decisions reported in (2002) 3 SCC-25 (Range Forest Officer Vs. S.T. Hadimani), (2004) 8 SCC-195 (Municipal Corporation, Faridabad Vs. Siri Niwas), (2005) 8 SCC-481 (Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh), (2005) 8 SCC-750 (Surendra Nagar District Panchayat Vs. Dahyabhai Amarsingh), (2006) 2 SCC-716 (M.P. State Agro Industries Development Corp. Ltd. Vs. S.C. Pandey), (2006) 5 SCC-173 (Municipal Council, Sujanpur vs. Surinder Singh), (2006) 9 SCC-697 (Krishna Bhagyajal Nigam Ltd. Vs. Mohd. Rafi), (2006) 9 SCC 132 (Surendranagar Distt. Panchayat Vs. Ganga Ben Laljibhai), (2006) 9 SCC-124 (Chief Engineer Ranjit Sagar Dam Vs. Sham Lal), (2006) 6 SCC-275 (Rajasthan Tourism Development Corporation Vs. Intejam Alizafri), (2006) 5 SCC-127 (Nagar Mahapalika Vs. State of U.P.), (2006) 1 SCC-106 (R.M. Yellati Vs. Asstt. Executive Engineer), (2006) 2 SCC-711 (State of M.P. vs. Arjunlal Rajak), (2007) 13 SCC-343 (Ranip Nagar Palika vs. Babuji Gabhaji Thakore), (2007) 12-172 (State of Maharashtra Vs. Dattatraya Digamber Birajdar), 2008 II CLR 1089 (State of Haryana Vs. Ramesh Kumar), (2008) 3 SCC-474 (BSNL Vs. Mahesh Chand), (2008) 5 SCC-171 (Municipal Corporation, Faridabad vs. Durga Prasad) and (2009) 17 SCC-326 (Ajnala Cooperative Sugar Mills Ltd. Vs. Sukhraj Singh).

It is settled beyond doubt by the Hon'ble Apex Court in different judgments including the judgments cited by the learned advocate for the party No. 1 that where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it is for the claimant to lead evidence to that effect and the workman's affidavit is not sufficient evidence for that purpose.

Keeping in view the principles as mentioned above, now, the present case at hand is to be considered.

12. So far the first contention raised by the learned advocate for the party No. 1 regarding the non-mention of the date of termination of the workman from services in the schedule of reference and in the statement of claim is concerned, admittedly, the alleged date of termination of the workman has not been mentioned in the schedule of reference. However, in the statement of claim, in paragraph 4, it has been mentioned by the workman that, "Immediately after the receipt of the notice dated 18.11.1993, the party No. 1 had not allowed the party No. 2 and his co-workers, who had issued notice to party No. 1, to resume duty w.e.f. 20.11.1993." In paragraph 05 of the statement of claim, it has been mentioned that, "The party No. 2 had approached the party No. 1 on 21.11.1993 and subsequently on 22.01.1993, but work was not provided."

In the rejoinder, the workman has specifically in paragraphs 1 and 2 has pleaded that she was orally terminated from services w.e.f. 22.11.1993. From the materials on record, it is found that for non-mention of the date of the termination of the workman in the schedule of reference, it cannot be said that the reference is not maintainable. Hence I find no force in the contention raised by the learned advocate for the party No. 1 in that regard.

13. To prove that she had worked for 240 days in the preceding 12 months of the date of termination, the workman has given her own evidence on affidavit. Though, the workman has not produced any other evidence in support of her such claim, her evidence has been corroborated by the evidence of the witnesses No. 1 and 2 of the party No. 1. As already mentioned above, Amitabh Datta, the witness No. 1 for party No. 1 has stated that the workman worked continuously from 1991 to 1993. Khandeswar Pralhad Gondane, witness No. 2 for the party No. 1 has stated that the workman worked for more than 240 days in every calendar year.

14. Apart from the oral evidence, the documentary evidence produced by the party No. 1 clinches the issue in favour of the workman. The party No. 1 has produced and proved the notice of retrenchment dated 09/12.02.1996 issued to the workman as Ext. M-II. In Ext. M-II, it has been mentioned that the workman joined in February, 1991 and worked from February, 1991 to November, 1993 and she is entitled for retrenchment compensation for three years i.e. for 45 days at the rate of 15 days per year. So, it is clear from the materials on record that the workman in fact had worked for more than 240 days in the preceding 12 calendar months of the date of his termination i.e. 22.11.1993. It is also found from the materials on record that before the termination of the workman from services, the mandatory provisions of Section 25-F of the Act were not complied with and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to her. So, the termination of the workman from services amounts to retrenchment and such termination is illegal.

Applying the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocate for the workman to the case in hand, it is found that the issuance of the retrenchment notice as per Ext. M-II and sending of the demand draft towards retrenchment compensation and one month's wages on 09/10.02.1996 does not cure the illegality of termination of the services of the workman w.e.f. 22.11.1993.

15. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh) have been pleased to take into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal Council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (In charge Officer Vs. Shankar Setty.) and have been pleased to hold that:-

“In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager in 1991, about 23 years back. It is also found that he continued as such till 22.11.1993, when he was terminated from services by party No.1. It is also found that production and marketing activities of the Handmade Paper unit, Wardha has been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 75,000 (Rupees seventy Five thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services

of Nanda Madhukar Rao Doel is illegal and unjustified. The workman is entitled for monetary compensation of Rs. 75,000 (Rupees seventy five thousand only) in lieu of reinstatement. She is not entitled for any other relief. The party No. 1 is directed to pay the monetary compensation of Rs. 75,000 to the workman, Nanda Madhukar Rao Doel within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 percent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1194.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर हैंडमेड पेपर प्रोडक्शन खादी और विलेज इंडस्ट्रीज कमीशन के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/171/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-42012/26/95-आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March , 2014

S.O. 1194.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/ NGP/171/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure, in the Industrial Dispute between the management of Director, Handmade Paper Production Khadhi & Village Industrial Commission and their workman, which was received by the Central Government on 24-03-2014.

[No. L-42012/26/95-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/171/2002 Date: 03-03-2014.

Party No. 1 : The Director,
Handmade Paper Production
Marketing and Training Centre,
Khadi & Village Industries
Commission,
Wardha-442001

Versus

Party No. 2 : Shri Sanjay Deoraoji Murdeo,
R/o Circus Ground, Ramnagar,
Wardha – 442001.

AWARD

(Dated: 3rd March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) (“the Act” in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Handmade Paper Production and Training Centre and their workman, Shri Sanjay Deoraoji Murdeo, for adjudication, as per letter No.L-42012/26/95-IR(DU) dated 27.03.1996, with the following schedule:-

“Whether the action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Sanjay Deoraoji Murdeo was proper, justified and legal? If not, to what relief the workman is entitled to?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Sanjay Deoraoji Murdeo, (“the workman” in short), filed the statement of claim and the management of Handmade Paper Production and Training Centre (“Party No. 1” in short) filed their written statement.

The case of the workman as presented in the statement of claim is that Party No. 1 is a Central Government undertaking and is engaged in manufacturing and production of Handmade Papers and in the factory of Party No. 1 at Wardha, about 250 permanent employees were working and he was employed by Party No. 1 as a skilled worker on 10.04.1984 and worked continuously and he was being paid @ Rs. 800 per month and though he himself and 17 other workers engaged by Party No. 1 worked with Party No. 1 for several years, they were continued as temporary workers.

The further case of the workman is that since the date of his appointment, he worked continuously without any gap and he had put in 240 days of attendance in every year of service, but he was not made permanent in service and even though, he was doing the same work as done by the permanent workers, neither he was paid wages at par with the permanent employees nor given the benefits of bonus, E.S.I. Schemes and Provident Fund Scheme etc. and as Party No. 1 did not issue the Attendance-cum-Wage Card to him and the other 17 temporary workers, on 18.11.1993, all of them issued a notice through an advocate to Party No. 1 to make them permanent and to give them all other benefits of permanent employees and soon after the

receipt of the said notice, Party No. 1 did not allow him and other temporary workers to resume duty w.e.f. 20.11.1993 and he was informed by Party No.1 through Shri A. Datta that he would be allowed to resume duty in case of his consenting to work under the Contractor, but he refused the offer, as because, he had already worked with Party No. 1 for years together and was entitled to be made permanent in service as per the representation dated 18.11.1993 and though he approached Party No. 1 on 21.11.1993 and 22.11.1993, he was not provided with work, so he alongwith the other 17 temporary workers on 22.11.1993 issued another notice, but inspite of the same, no work was provided to them, so they issued another notice through the advocate on 27.11.1993, but Party No. 1 neither replied to the notice nor provided him any work and thereafter also, he continuously approached and requested the Party No. 1 to provide him work, but Party No. 1 did not pay any heed to his request and after waiting for a long time, he approached the Labour Court, Nagpur by filing U.L.P.A. Complaint No. 793 of 1993 and the Labour Court vide its interim order, directed Party No. 1 to reinstate him in service, but no work was provided to him by Party No. 1 and Party No. 1 moved a revision application before the Industrial Court, Nagpur, against the order of the Labour Court raising objection of the Labour Court of having no jurisdiction to entertain and decide the matter pertaining to the establishment of the Central Government.

The further case of the workman is that out of the rest 17 retrenched workers, five workers approached the Asstt. Labour Commissioner (Central), Nagpur (“the ALC” in short) and the said five workers were provided with work by Party No. 1, so he withdrew the case filed by him in the Labour Court, Nagpur and approached the ALC by filing an application under Section 2-A of the Act and the five workers, who had been provided work by Party No. 1 after their approaching the ALC were juniors to him and the ALC issued notice to Party No. 1 and Party No. 1 did not agree for any amicable settlement, so there was failure of the conciliation proceedings and the ALC submitted the failure report to the Central Government.

It is also pleaded by the workman that Party No. 1 had issued experience certificate in his favour and before terminating his services, Party No.1 neither issued one month’s notice nor paid notice pay in lieu of the notice or retrenchment compensation as provided under Section 25-F of the Act and therefore, his removal/retrenchment from services is illegal, improper and contrary to law and he is entitled for reinstatement in services with full back wages alongwith all monetary benefits of permanent employee, from the date of joining the service of Party No. 1 till the date of actual reinstatement and work is still available with Party No. 1 and Party No.1 engaged new persons on less wages for more production.

3. The Party No. 1 in the written statement has pleaded inter-alia that it does not have any Managing

Director, but only a Director of Handmade Paper Industry, which runs under Khadi and Village Industries Commission ("KVIC" in short) and KVIC is a statutory body, which was created by the statute, "Khadi & Village Industries Commission Act, 1956" and KVIC is functioning under the Ministry of Industry, Government of India and to achieve the object entrusted to KVIC, several Research and Training Centers were established including the J.B. Research Institute at Wardha, to provide artisan training courses for Handmade Paper Industries, but the unit so established at Wardha was handed over to a local institution, namely, "Khadi Gramodhyog Sangh, Manganwadi, Wardha, for the purpose of continuing the production activities and in 1984, the management of the said unit was taken over by it and it was decided to use the said unit as a demonstration-cum-extension Centre, for conducting experiments and testing etc. and arranging training of skilled workers and two technical persons were posted to look after the work and the unit finally started its Science & Technology (Research) work and for that some workers were engaged on daily wages, from November, 1984 and the work involved were of research and training and therefore not a continuous work and the workers were engaged as per requirements of work and after completion of the work, they were discontinued and none of the workers was engaged on continuous basis and the said unit functioned from 1984 to 1988 and when the unit was doing a prestigious research work of developing a process for making stiff, thick and hard water proof board by using completely waste banana stem, the workers stopped attending the work from 11.01.1988 and when enquiry was made for their non attendance, it was informed that they wanted regular work without break and unless and until their such demand would be fulfilled, they would not join the work.

It is further pleaded by Party No. 1 that six of the daily wages workers lodged complaint with the ALC and worker Shankar Rao Ingle approached the Labour court, Nagpur and a written statement was filed by KVIC raising the question of jurisdiction and the said case continued till 1991 without adjudication and there was a joint discussion on 18.01.1991 between the six workers, who had made complaint to ALC and the in charge of the unit at Wardha and it was informed to the ALC that under Production Marketing and Training Programme of KVIC, the unit would start functioning from 01.02.1991, where all the six workers could be engaged on daily wages, as such, the ALC closed the case with the instruction to inform him about the appointment and appointment letters dated 28.01.1991 were issued to the said six workers including Shankar Rao Ingle, directing them to join work and out of them, five workers joined their duties and the appointment of Shankar Rao Ingle was made with the condition of withdrawal of the case filed by him, but Shankar Rao Ingle neither withdrew the case nor joined work and one of the

conditions of appointment of the rest five workers was that they would enter into an agreement with its management and the finalization of the agreement took a long time and on 19.11.1993, a meeting was held with all the workers and in the presence of the then Director, Regional Office, KVIC, Wardha, the workers were requested to enter into the agreement, which was at par with another unit of Handmade Paper at Pune and the workers requested for two to three days time to give their consent, however, on 22.11.1993, the workers sent a letter informing their unwillingness to work on contract basis and that they would work only on daily wages basis and it was surprised to note that when the workers were provided work on daily wages basis in 1988, they demanded continuous work and when they were offered continuous work under Production Marketing and Training Programme in 1991, they refused to enter into an agreement and to work on contract basis, refusing to adhere to the condition of appointment and the workers could not be continued due to their refusal to enter into the agreement and their discontinuance from work was on their own accord and workers had stalled the Research Programme in 1988 and the unit had to remain close till 1991.

Party No. 1 has further pleaded that five workers approached the ALC (Central), Nagpur vide their complaint dated 22.11.1993, complaining that they were illegally terminated and the conciliation proceedings ended in failure and on submission of the failure reports by the ALC (Central), Nagpur, the Central Government refused to refer the cases of the said five workers for adjudication, by order dated 20.01.1995.

The further case of the Party No. 1 is that in the meantime, in the complaints filed by the workers in the Labour Court, Nagpur interim order was passed on 31.05.1994 directing it to reinstate the complainants and it filed revision before the Industrial Court against the order dated 31.05.1994 and on 17.08.1994, by way of pursis, the workers gave the undertaking before the Industrial Court not to proceed with the complaint filed before the Labour Court and in view of the withdrawal of the complaint by the workers, it also withdrew the revision from the Industrial Court on 10.04.1995 and on the basis of the orders of the Ministry, the Directorate of Handmade Paper Industry, Central Office at Mumbai moved a note to the commission to close down the production and Marketing activities of the unit and subsequently, the commission in its 449th meeting dated 20.12.1995 decided to close down the activities and retrench all daily wage workers and on the basis of the commission's decision, all workers were served with the retrenchment notice alongwith the retrenchment compensation on 09.02.1996 and some workers, who had left the work as far back as 1993 were also given the retrenchment benefit.

The specific case of the Party No. 1 is that the workman was not in its employment since 10.04.1984 and he did not work continuously since the date of his appointment and he worked intermittently on daily wages, as and when work was available and as the workers denied to enter into an agreement, the production activities were stopped and presently, it is engaged only in providing Artisan training and in the year 1993, there were only two permanent Handmade Paper staff and four JBCRI staff and at present, there are only one Handmade Paper staff and three permanent JBCRI staff and the unit at Wardha had to be closed from 11.01.1988 to 1991, as the daily wage workers left the work and the unit again started functioning from 01.02.1991 and at that time, the workman and other workers were given appointment letters with conditions that they have to enter into an agreement and the claim of the workman that he had put in continuous service of 240 days is false and the workman did not join the work as per the appointment letter dated 31.01.1991 and as such, question of not allowing him to join work does not arise and the workman is not entitled to any relief.

4. In the rejoinder, the workman has denied the allegations made in the written statement and reiterated the facts mentioned in the statement of claim. It is further pleaded by the workman in the rejoinder that he was orally terminated w.e.f. 22.11.1993 and due to the intervention of the ALC, the workers were again allowed to resume their duties and thereafter, the workers demanded for their legitimate rights including payment of wages applicable to them and Party No. 1 with malafide intension decided to stop the work, instead of implementing the statutory law and he was provided with work from 1st, February, 1991 as per the order issued to the workers including himself individually and he worked continuously till 22.11.1993 and he was orally terminated from services w.e.f. 22.11.1993, without service of one month's notice or payment of one month's pay in lieu of notice or retrenchment compensation and his oral termination is illegal, improper and contrary to law.

5. It is to be mentioned here that this reference alongwith references No. 160 to 167, 169, 170 and 172 to 178 of 2002 had been disposed of by this Tribunal by a common award dated 27.03.2007, directing the reinstatement of the workman and other petitioners. Being aggrieved by the said award, the Party No. 1 approached the Hon'ble High Court, Nagpur Bench in Writ Petition No. 4503/2007 and the Hon'ble High Court by order dated 25.08.2008 have been pleased to pass the following orders:-

“In view of the above, the impugned award dated 27.03.2007 passed by the Industrial Tribunal-cum-Labour Court, Nagpur in case Nos. 160/2002 to 167/2002 and 169/2002 to 178/2002 is quashed and set aside. The Tribunal is directed to allow the parties to lead further evidence, if

they so desire and decided the cases thereafter. The Tribunal is directed to decide the reference in case Nos. 174/2002 to 178/2002 by common or separate awards as he deems fit and proper on the basis of the evidence led by the parties.”

According to the direction of the Hon'ble High Court, the parties were given the chance of leading further evidence.

The workman, who had examined himself as a witness in support of his case did not adduce further evidence.

However, the Party No. 1 examined two witnesses, namely, Khandeswar Pralhad Gondane and Milind Wakode and produced documentary evidence in support of its case, besides the evidence already adduced.

6. The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim and rejoinder. The workman in his cross-examination has stated that he worked continuously from 1985 to November, 1993. He has denied the suggestion that he did not work for 240 days in any calendar year. The workman in his cross-examination has further stated that on 09.02.1996, one registered letter, M-2 was sent to him, but he returned the same. The workman has admitted that the factory was closed from 1988 to 1991 and he did not work from January, 1988.

7. The first witness for Party No. 1 is Amitabh Datta, an Asstt. Director of Party No. 1. The evidence of witness, Amitabh is on affidavit. In his examination in chief on affidavit, in paragraph 8, this witness has stated that, “the party No.2 was given appointment vide letter 23.09.1991 on temporary basis. The appointment was for a fixed period until 31.12.1991, that party No.2 however did not join the work.” In paragraph 11 of his affidavit this witness has stated that, “However the unit was again started from 01.02.1991 and the Party No. 2 were served appointment letter dated 28.01.1991 to join, with conditions that they have to enter into an agreement. That when in 1993 the workers including Party No. 2 was asked to sign the agreement. Instead of signing the agreement the workers including Party No. 2 sent letter dated 22.11.1993 informing that they are not ready to work on contract basis and will work on daily wages. That in absence of entering into the agreement which was the condition of appointment the workers could not be given work and they did not work after 22.11.1993. It is denied that party No.2 was reinstated in service from August, 94 to Jan. 1998. It is denied that the retrenchment dated 9.2.1996 was illegal, on the contrary though the Party No. 2 had not worked after 22.11.1993, nor was entitled to, he was given the benefits alongwith other workers. The retrenchment notice alongwith the compensation was sent to all the workers including the Party No. 2.”

In his cross-examination, this witness has stated that he was posted at Wardha from 1984 to 1995 and he knows the workman and the workman was working from 1985 at Wardha. In his cross-examination, this witness has categorically admitted that the workman had worked continuously from 1991 to 1993.

8. The witness No. 2 examined by Party No. 1 is Khandeswar Pralhad Gondane. The examination-in-chief on affidavit of this witness is in the line of the stands taken by the Party No. 1 in the written statement. In paragraph 3 of his affidavit, this witness has stated that, "party No. 2 as well as other employees were never in continuous employment with Party No. 1. They had not completed 240 days with Party No.1. Despite this, they were offered with closure compensation alongwith all other legal dues." Demolishing his own evidence given in the examination-in-chief, in his cross-examination, this witness has stated that he is working with Handmade Paper from 17.07.1992 and the workman was working with Handmade Paper prior to his joining in service and he was also working even after his joining service in 1992. This witness has categorically admitted that the workman worked for more than 240 days in every calendar year.

9. The third witness for Party No. 1 is Milind Wakode, the Divisional Director, Nagpur. In his examination-in-chief on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. This witness has further stated that the Handmade Paper Unit at Wardha had been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995 and retrenchment notice alongwith compensation was sent to all the workers by letter dated 09/10.02.1996. This witness has also proved the office copy of the termination order as Ext. M-II.

In his cross-examination, this witness has stated that Ext. M-II is dated 09.02.1996 and he cannot say the exact date of termination of the workman and Ext. M-III is the office copy of the order dated 31.01.1991 and Ext.M-III was issued after the engagement of the workman by the management and as per condition No.7 of Ext. M-III, the workman was to execute an agreement as prescribed by the office of Handmade Paper, Khadi Board, Pune and as the workman did not agree to execute any agreement, he was not provided with work or made permanent and the workman was engaged as labourer on daily wages and he does not have any idea as to how the retrenchment compensation paid to the workman was calculated and as per Ext. M-II, retrenchment compensation was paid to the workman for 3 years i.e. for 45 days.

10. At the time of argument, it was submitted by the learned advocate for the workman that the workman was working with the Party No. 1 as a skilled labourer w.e.f. 10.04.1984 and from the date of his initial appointment, the workman worked continuously and he had completed more

than 240 days of work in each calendar year and from the date of completion of 240 days of work, the workman was entitled for regularization in service, but his services were not regularized and the workman was compelled to sign an illegal agreement and when he did not agree to sign the same, he was not allowed to join service from 22.11.1993 and such termination of the workman was without compliance of the mandatory provisions of Section 25-F of the Act and the termination amounts to retrenchment and the termination of the workman is illegal, arbitrary, malafide and contrary to the principles of natural justice and payment of retrenchment compensation in 1996 cannot cure such illegality and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1964 II LLJ-271 (Ambalal Shivlal Vs Vin (D.M.) and others), 1969 II LLJ-373 (Sivanandam Vs Press Superintendent, S. Railway, Madras), 1979 I LLJ-168 (B.M. Gupta Vs State of West Bengal), 1960 I LLJ – 251 (S.C.) (State of Bombay Vs Hospital Mazdoor Sabha) and 1964 I LLJ – 333 (S.C.) (Workmen of Subong Tea Estate Vs Subong Tea Estate).

11. On the other hand, it was submitted by the learned advocate for the Party No. 1 that the terms of the reference is vague and not specific and though, the reference is for adjudication of the legality or otherwise of the termination of the services of the workman, the alleged dated of such termination has not been mentioned in the schedule of reference and the date of the alleged termination is very crucial, in absence of which it is not possible for effective adjudication of the dispute and on that score, the reference is not maintainable. It was also submitted by the learned advocate for the Party No. 1 that in the statement of claim filed by the workman also, there is no specific pleading as to when his services were terminated and on that count also, the reference is to be answered in the negative.

It was further submitted by the learned advocate for the Party No. 1 that though the workman was offered engagement on daily wages basis as per office order dated 31.01.1991, he did not join duty and as such, there is no question of termination of the services of the workman and even for the sake of argument, it is held that the workman worked as per office order dated 31.01.1991 on daily wages, the workman has not adduced any legal evidence on record to show that he had worked for 240 days in the preceding 12 months of the date of termination and the onus to prove such fact is on the workman, but he failed to discharge the onus by adducing necessary evidence and as such, he is not entitled for the benefits of the provisions of Section 25-F of the Act and as per the decision of the commissioner, the production activities of

the unit was closed down and even though, the workman did not work after 1988, notice pay and retrenchment compensation was sent to him alongwith the retrenchment notice dated 09.02.1996 and Party No. 1 did not commit any illegality and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the Party No. 1 placed reliance on the decisions reported in the decisions reported in (2002) 3 SCC-25 (Range Forest Officer Vs. S.T. Hadimani), (2004) 8 SCC-195 (Municipal Corporation, Faridabad Vs. Siri Niwas), (2005) 8 SCC-481 (Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh), (2005) 8 SCC-750 (Surendra Nagar District Panchayat Vs. Dahyabhai Amarsingh), (2006) 2 SCC-716 (M.P. State Agro Industries Development Corpn. Ltd. Vs. S.C. pandey), (2006) 5 SCC-173 (Municipal Council, Sujanpur vs. Surinder Singh), (2006) 9 SCC-697 (Krishna Bhagyajal Nigam Ltd. Vs. Mohd. Rafi), (2006) 9 SCC-132 (Surendranagar Distt. Panchayat Vs. Ganga Ben Laljibhai), (2006) 9 SCC-124 (Chief Engineer Ranjit Sagar Dam vs. Sham Lal), (2006) 6 SCC-275 (Rajasthan Tourism Development Corporation Vs. Intejam Alizafri), (2006) 5 SCC-127 (Nagar Mahapalika Vs. State of U.P.), (2006) 1 SCC-106 (R.M. Yellati Vs. Asstt. Executive Engineer), (2006) 2 SCC-711 (State of M.P. vs. Arjunlal Rajak), (2007) 13 SCC-343 (Ranip Nagar Palika Vs. Babuji Gabhaji Thakore), (2007) 12-172 (State of Maharashtra vs. Dattatraya Digamber Birajdar), 2008 II CLR 1089 (State of Haryana Vs. Ramesh Kumar), 92008) 3 SCC-474 (BSNL Vs. Mahesh Chand), (2008) 5 SCC-171 (Municipal Corporation, Faridabad Vs. Durga Prasad) and (2009) 17 SCC-326 (Ajnala Cooperative Sugar Mills Ltd. Vs. Sukhraj Singh).

It is settled beyond doubt by the Hon'ble Apex Court in different judgments including the judgments cited by the learned advocate for the party No. 1 that where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it is for the claimant to lead evidence to that effect and the workman's affidavit is not sufficient evidence for that purpose.

Keeping in view the principles as mentioned above, now, the present case at hand is to be considered.

12. So far the first contention raised by the learned advocate for the party No. 1 regarding the non-mention of the date of termination of the workman from services in the schedule of reference and in the statement of claim is concerned, admittedly, the alleged date of termination of the workman has not been mentioned in the schedule of reference. However, in the statement of claim, in paragraph 4, it has been mentioned by the workman that, "Immediately after the receipt of the notice dated 18.11.1993, the party No. 1 had not allowed the party No. 2 and his co-workers, who had issued notice to party No. 1, to resume duty w.e.f. 20.11.1993." In paragraph 05 of the statement of claim, it has been mentioned that, "The party No. 2 had approached

the party No. 1 on 21.11.1993 and subsequently on 22.01.1993, but work was not provided."

In the rejoinder, the workman has specifically in paragraphs 1 and 2 has pleaded that he was orally terminated from services w.e.f. 22.11.1993. From the materials on record, it is found that for non-mention of the date of the termination of the workman in the schedule of reference, it cannot be said that the reference is not maintainable. Hence I do not find any force in the contention raised by the learned advocate for the Party No. 1 in that regard.

13. To prove that he had worked for 240 days in the preceding 12 months of the date of termination, the workman has given his own evidence on affidavit. Though, the workman has not produced any other evidence in support of his such claim, his evidence has been corroborated by the evidence of the witnesses No. 1 and 2 of the party No. 1. As already mentioned above, Amitabh Datta, the witness No. 1 for party No. 1 has stated that the workman worked continuously from 1991 to 1993. Khandeswar Pralhad Gondane, witness No. 2 for the party No. 1 has stated that the workman worked for more than 240 days in every calendar year.

14. Apart from the oral evidence, the documentary evidence produced by the party No. 1 clinches the issue in favour of the workman. The party No. 1 has produced and proved the notice of retrenchment dated 09/12/02/1996 issued to the workman as Ext. M-II. In Ext. M-II, it has been mentioned that the workman joined in February, 1991 and worked from February, 1991 to November, 1993 and he is entitled for retrenchment compensation for three years i.e. for 45 days at the rate of 15 days per year. So, it is clear from the materials on record that the workman infact had worked for more than 240 days in the preceding 12 calendar months of the date of his termination i.e. 22.11.1993. It is also found from the material on record that before the termination of the workman from services, the mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him. So, the termination of the workman from services amounts to retrenchment and such termination is illegal.

Applying the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocate for the workman to the case in hand, it is found that the issuance of the retrenchment notice as per Ext. M-II and sending of the demand draft towards retrenchment compensation and one month's wages on 09/10/02/1996 does not cure the illegality of termination of the services of the workman w.e.f. 22.11.1993.

15. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh) after taking into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (In charge Officer Vs. Shankar Setty.) have been pleased to hold that:-

"In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager in 1991, about 23 years back. It is also found that he continued as such till 22.11.1993, when he was terminated from services by party no.1. It is also found that production and marketing activities of the handmade paper unit, Wardha has been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 75,000/- (Rupees seventy Five thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Sanjay Deoraoji Murdeo is illegal and unjustified. The workman is entitled for monetary compensation of Rs.75,000/- (Rupees seventy five thousand only) in lieu of reinstatement. He is not entitled for any other relief. The party no.1 is directed to pay the monetary compensation

of Rs. 75,000/- to the workman Shri Sanjay Deoraoji Murdeo within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 percent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1195.—औद्योगिक विवाद अधिनियम, 1947 (1947

का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर हैंडमेड पेपर प्रोडक्शन खादी और विलेज इंडस्ट्रीज कमीशन के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/160/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-42012/28/95-आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March , 2014

S.O. 1195.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/ NGP/160/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Director, Handmade Paper Production Khadi & Village Industrial Commission and their workmen, which was received by the Central Government on 24-03-2014.

[No. L-42012/28/95-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

**BEFORE SHRI J. P. CHAND,
PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/160/2002 Date: 03-03-2014.

Party No. 1 : The Director,
Handmade Paper Production
Marketing and Training Centre,
Khadi & Village Industries
Commission,
Wardha-442001.

Versus

Party No. 2 : Shri Sudhir V. Khodake,
R/o Jain Mandi Ramnagar,
Wardha – 442001.

AWARD

(Dated: 3rd March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) (“the Act” in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Handmade Paper Production and Training Centre and their workman, Shri Sudhir V. Khodake, for adjudication, as per letter No.L-42012/28/95-IR (DU) dated 27.03.1996, with the following schedule:-

“Whether the action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Sudhir V. Khodake was proper, justified and legal? If not, to what relief the workman is entitled to?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Sudhir V. Khodake, (“the workman” in short), filed the statement of claim and the management of Handmade Paper Production and Training Centre (“Party No. 1” in short) filed their written statement.

The case of the workman as presented in the statement of claim is that Party No. 1 is a Central Government undertaking and is engaged in manufacturing and production of Handmade Papers and in the factory of Party No. 1 at Wardha, about 250 permanent employees were working and he was employed by Party No. 1 as a skilled worker on 21.04.1985 and worked continuously and he was being paid @ Rs. 800/- per month and though he himself and 17 other workers engaged by Party No. 1 worked with Party No. 1 for several years, they were continued as temporary workers.

The further case of the workman is that since the date of his appointment, he worked continuously without any gap and he had put in 240 days of attendance in every year of service, but he was not made permanent in service and even though, he was doing the same work as done by the permanent workers, neither he was paid wages at par with the permanent employees nor given the benefits of bonus, E.S.I. Schemes and Provident Fund Scheme etc and as Party No. 1 did not issue the attendance-cum-Wage Card to him and the other 17 temporary workers, on 18.11.1993, all of them issued a notice through an advocate to Party No. 1 to make them permanent and to give them all other benefits of permanent employees and soon after the receipt of the said notice, Party No. 1 did not allow him and other temporary workers to resume duty w.e.f. 20.11.1993 and he was informed by Party No.1 through Shri A. Datta that he would be allowed to resume duty in case of his consenting to work under the Contractor, but

he refused the offer, as because, he had already worked with Party No. 1 for years together and was entitled to be made permanent in service as per the representation dated 18.11.1993 and though he approached Party No. 1 on 21.11.1993 and 22.11.1993, he was not provided with work, so he alongwith the other 17 temporary workers on 22.11.1993 issued another notice, but inspite of the same, no work was provided to them, so they issued another notice through the advocate on 27.11.1993, but Party No. 1 neither replied to the notice nor provided him any work and thereafter also, he continuously approached and requested the Party No. 1 to provide him work, but Party No. 1 did not pay any heed to his request and after waiting for a long time, he approached the Labour Court, Nagpur by filing U.L.P.A. Complaint No. 798 of 1993 and the Labour Court vide its interim order, directed Party No. 1 to reinstate him in service, but no work was provided to him by Party No. 1 and Party No. 1 moved a revision application before the Industrial Court, Nagpur, against the order of the Labour Court raising objection of the Labour Court of having no jurisdiction to entertain and decide the matter pertaining to the establishment of the Central Government.

The further case of the workman is that out of the rest 17 retrenched workers, five workers approached the Asstt. Labour Commissioner (Central), Nagpur (“the ALC” in short) and the said five workers were provided with work by Party No. 1, so he withdrew the case filed by him in the Labour Court, Nagpur and approached the ALC by filing an application under Section 2-A of the Act and the five workers, who had been provided work by Party No. 1 after their approaching the ALC were juniors to him and the ALC issued notice to Party No. 1 and Party No. 1 did not agree for any amicable settlement, so there was failure of the conciliation proceedings and the ALC submitted the failure report to the Central Government.

It is also pleaded by the workman that Party No. 1 had issued experience certificate in his favour and before terminating his services, Party No.1 neither issued one month's notice nor paid notice pay in lieu of the notice or retrenchment compensation as provided under Section 25-F of the Act and therefore, his removal/retrenchment from services is illegal, improper and contrary to law and he is entitled for reinstatement in services with full back wages alongwith all monetary benefits of permanent employee, from the date of joining the service of Party No. 1 till the date of actual reinstatement and work is still available with Party No. 1 and Party No.1 engaged new persons on less wages for more production.

3. The Party No. 1 in the written statement has pleaded inter-alia that it does not have any Managing Director, but only a Director of Handmade Paper Industry, which runs under Khadi and Village Industries Commission (“KVIC” in short) and KVIC is a statutory body, which was created by the statute, “Khadi & Village Industries

Commission Act, 1956" and KVIC is functioning under the Ministry of Industry, Government of India and to achieve the object entrusted to KVIC, several Research and Training Centers were established including the J.B. Research Institute at Wardha, to provide artisan training courses for Handmade Paper Industries, but the unit so established at Wardha was handed over to a local institution, namely, "Khadi Gramodhyog Sangh, Manganwadi, Wardha, for the purpose of continuing the production activities and in 1984, the management of the said unit was taken over by it and it was decided to use the said unit as a demonstration-cum-extension Centre, for conducting experiments and testing etc. and arranging training of skilled workers and two technical persons were posted to look after the work and the unit finally started its Science & Technology (Research) work and for that some workers were engaged on daily wages, from November, 1984 and the work involved were of research and training and therefore not a continuous work and the workers were engaged as per requirements of work and after completion of the work, they were discontinued and none of the workers was engaged on continuous basis and the said unit functioned from 1984 to 1988 and when the unit was doing a prestigious research work of developing a process for making stiff, thick and hard water proof board by using completely waste banana stem, the workers stopped attending the work from 11.01.1988 and when enquiry was made for their non attendance, it was informed that they wanted regular work without break and unless and until their such demand would be fulfilled, they would not join the work.

It is further pleaded by Party No. 1 that six of the daily wages workers lodged complaint with the ALC and worker Shankar Rao Ingle approached the Labour Court, Nagpur and a written statement was filed by KVIC raising the question of jurisdiction and the said case continued till 1991 without adjudication and there was a joint discussion on 18.01.1991 between the six workers, who had made complaint to ALC and the incharge of the unit at Wardha and it was informed to the ALC that under Production Marketing and Training Programme of KVIC, the unit would start functioning from 01.02.1991, where all the six workers could be engaged on daily wages, as such, the ALC closed the case with the instruction to inform him about the appointment and appointment letters dated 28.01.1991 were issued to the said six workers including Shankar Rao Ingle, directing them to join work and out of them, five workers joined their duties and the appointment of Shankar Rao Ingle was made with the condition of withdrawal of the case filed by him, but Shankar Rao Ingle neither withdrew the case nor joined work and one of the conditions of appointment of the rest five workers was that they would enter into an agreement with its management and the finalization of the agreement took a long time and on 19.11.1993, a meeting was held with all

the workers and in the presence of the then Director, Regional Office, KVIC, Wardha, the workers were requested to enter into the agreement, which was at par with another unit of Handmade Paper at Pune and the workers requested for two to three days time to give their consent, however, on 22.11.1993, the workers sent a letter informing their unwillingness to work on contract basis and that they would work only on daily wages basis and it was surprised to note that when the workers were provided work on daily wages basis in 1988, they demanded continuous work and when they were offered continuous work under Production Marketing and Training Programme in 1991, they refused to enter into an agreement and to work on contract basis, refusing to adhere to the condition of appointment and the workers could not be continued due to their refusal to enter into the agreement and their discontinuance from work was on their own accord and workers had stalled the Research Programme in 1988 and the unit had to remain close till 1991.

Party No. 1 has further pleaded that five workers approached the ALC (Central), Nagpur vide their complaint dated 22.11.1993, complaining that they were illegally terminated and the conciliation proceedings ended in failure and on submission of the failure reports by the ALC (Central), Nagpur, the Central Government refused to refer the cases of the said five workers for adjudication, by order dated 20.01.1995.

The further case of the Party No. 1 is that in the meantime, in the complaints filed by the workers in the Labour Court, Nagpur interim order was passed on 31.05.1994 directing it to reinstate the complainants and it filed revision before the Industrial Court against the order dated 31.05.1994 and on 17.08.1994, by way of pursis, the workers gave the undertaking before the Industrial Court not to proceed with the complaint filed before the Labour Court and in view of the withdrawal of the complaint by the workers, it also withdrew the revision from the Industrial Court on 10.04.1995 and on the basis of the orders of the Ministry, the Directorate of Handmade Paper Industry, Central Office at Mumbai moved a note to the commission to close down the production and Marketing activities of the unit and subsequently, the commission in its 449th meeting dated 20.12.1995 decided to close down the activities and retrench all daily wage workers and on the basis of the commission's decision, all workers were served with the retrenchment notice alongwith the retrenchment compensation on 09.02.1996 and some workers, who had left the work as far back as 1993 were also given the retrenchment benefit.

The specific case of the Party No. 1 is that the workman was not in its employment since 21.04.1985 and he did not work continuously since the date of his appointment and he worked intermittently on daily wages, as and when work was available and as the workers denied

to enter into an agreement, the production activities were stopped and presently, it is engaged only in providing Artisan training and in the year 1993, there were only two permanent Handmade Paper staff and four JBCRI staff and at present, there are only one Handmade Paper staff and three permanent JBCRI staff and the unit at Wardha had to be closed from 11.01.1988 to 1991, as the daily wage workers left the work and the unit again started functioning from 01.02.1991 and at that time, the workman and other workers were given appointment letters with conditions that they have to enter into an agreement and the claim of the workman that he had put in continuous service of 240 days is false and the workman did not join the work as per the appointment letter dated 31.01.1991 and as such, question of not allowing him to join work does not arise and the workman is not entitled to any relief.

4. In the rejoinder, the workman has denied the allegations made in the written statement and reiterated the facts mentioned in the statement of claim. It is further pleaded by the workman in the rejoinder that he was orally terminated w.e.f. 22.11.1993 and due to the intervention of the ALC, the workers were again allowed to resume their duties and thereafter, the workers demanded for their legitimate rights including payment of wages applicable to them and Party No. 1 with malafide intension decided to stop the work, instead of implementing the statutory law and he was provided with work from 1st, February, 1991 as per the order issued to the workers including himself individually and he worked continuously till 22.11.1993 and he was orally terminated from services w.e.f. 22.11.1993, without service of one month's notice or payment of one month's pay in lieu of notice or retrenchment compensation and his oral termination is illegal, improper and contrary to law.

5. It is to be mentioned here that this reference alongwith references No. 161 to 167 and 169 to 178 of 2002 had been disposed of by this Tribunal by a common award dated 27.03.2007, directing the reinstatement of the workman and other petitioners. Being aggrieved by the said award, the Party No. 1 approached the Hon'ble High Court, Nagpur Bench in Writ Petition No. 4503/2007 and the Hon'ble High Court by order dated 25.08.2008 have been pleased to pass the following orders:-

“In view of the above, the impugned award dated 27.03.2007 passed by the Industrial Tribunal –cum-Labour Court, Nagpur in case Nos. 160/2002 to 167/2002 and 169/2002 to 178/2002 is quashed and set aside. The Tribunal is directed to allow the parties to lead further evidence, if they so desire and decided the cases thereafter. The Tribunal is directed to decide the reference in case Nos. 174/2002 to 178/2002 by common or separate awards as he deems fit and proper on the basis of the evidence led by the parties.”

According to the direction of the Hon'ble High Court, the parties were given the chance of leading further evidence.

The workman, who had examined himself as a witness in support of his case did not adduce further evidence.

However, the Party No. 1 examined two witnesses, namely, Khandeswar Pralhad Gondane and Milind Wakode and produced documentary evidence in support of its case, besides the evidence already adduced.

6. The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim and rejoinder. The workman in his cross-examination has stated that he worked continuously from 1985 to November, 1993. He has denied the suggestion that he did not work for 240 days in any calendar year. The workman in his cross-examination has further stated that on 09.02.1996, one registered letter, M-2 was sent to him, but he returned the same. The workman has admitted that the factory was closed from 1988 to 1991 and he did not work from January, 1988.

7. The first witness for Party No. 1 is Amitabh Datta, an Asstt. Director of Party No. 1. The evidence of witness, Amitabh is on affidavit. In his examination in chief on affidavit, in paragraph 8, this witness has stated that, “the party No.2 was given appointment vide letter 23.09.1991 on temporary basis. The appointment was for a fixed period until 31.12.1991, that party No.2 however did not join the work.” In paragraph 11 of his affidavit this witness has stated that, “However the unit was again started from 01.02.1991 and the Party No. 2 were served appointment letter dated 28.01.1991 to join, with conditions that they have to enter into an agreement. That when in 1993 the workers including Party No. 2 was asked to sign the agreement. Instead of signing the agreement the workers including Party No. 2 sent letter dated 22.11.1993 informing that they are not ready to work on contract basis and will work on daily wages. That in absence of entering into the agreement which was the condition of appointment the workers could not be given work and they did not work after 22.11.1993. It is denied that party No.2 was reinstated in service from August, 94 to Jan. 1998. It is denied that the retrenchment dated 9.2.1996 was illegal, on the contrary though the Party No. 2 had not worked after 22.11.1993, nor was entitled to, he was given the benefits alongwith other workers. The retrenchment notice alongwith the compensation was sent to all the workers including the Party No. 2.”

In his cross-examination, this witness has stated that he was posted at Wardha from 1984 to 1995 and he knows the workman and the workman was working from 1985 at Wardha. In his cross-examination, this witness

has categorically admitted that the workman had worked continuously from 1991 to 1993.

8. The witness no.2 examined by Party No. 1 is Khandeswar Pralhad Gondane. The examination-in-chief on affidavit of this witness is in the line of the stands taken by the Party No. 1 in the written statement. In paragraph 3 of his affidavit, this witness has stated that, “party no. 2 as well as other employees were never in continuous employment with Party No. 1. They had not completed 240 days with Party No.1. Despite this, they were offered with closure compensation alongwith all other legal dues.” Demolishing his own evidence given in the examination-in-chief, in his cross-examination, this witness has stated that he is working with Handmade Paper from 17.07.1992 and the workman was working with Handmade Paper prior to his joining in service and he was also working even after his joining service in 1992. This witness has categorically admitted that the workman worked for more than 240 days in every calendar year.

9. The third witness for Party No. 1 is Milind Wakode, the Divisional Director, Nagpur. In his examination-in-chief on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. This witness has further stated that the Handmade Paper Unit at Wardha had been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995 and retrenchment notice alongwith compensation was sent to all the workers by letter dated 09/10.02.1996. This witness has also proved the office copy of the termination order as Ext. M-II.

In his cross-examination, this witness has stated that Ext. M-II is dated 09.02.1996 and he cannot say the exact date of termination of the workman and Ext. M-III is the office copy of the order dated 31.01.1991 and Ext.M-III was issued after the engagement of the workman by the management and as per condition No.7 of Ext. M-III, the workman was to execute an agreement as prescribed by the office of Handmade Paper, Khadi Board, Pune and as the workman did not agree to execute any agreement, he was not provided with work or made permanent and the workman was engaged as labourer on daily wages and he does not have any idea as to how the retrenchment compensation paid to the workman was calculated and as per Ext. M-II, retrenchment compensation was paid to the workman for 3 years i.e. for 45 days.

10. At the time of argument, it was submitted by the Learned Advocate for the workman that the workman was working with the Party No. 1 as a skilled labourer w.e.f. 21.04.1985 and from the date of his initial appointment, the workman worked continuously and he had completed more than 240 days of work in each calendar year and from the date of completion of 240 days of work, the workman was entitled for regularization in service, but his services were not regularized and the workman was compelled to sign

an illegal agreement and when he did not agree to sign the same, he was not allowed to join service from 22.11.1993 and such termination of the workman was without compliance of the mandatory provisions of Section 25-F of the Act and the termination amounts to retrenchment and the termination of the workman is illegal, arbitrary, malafide and contrary to the principles of natural justice and payment of retrenchment compensation in 1996 cannot cure such illegality and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the Learned Advocate for the workman placed reliance on the decisions reported in 1964 II LLJ-271 [Ambalal Shivlal Vs Vin (D.M.) and others], 1969 II LLJ-373 (Sivanandam Vs Press Superintendent, S. Railway, Madras), 1979 I LLJ-168 (B.M. Gupta Vs State of West Bengal), 1960 I LLJ – 251 (S.C.) (State of Bombay Vs Hospital Mazdoor Sabha) and 1964 I LLJ – 333 (S.C.) (Workmen of Subong Tea Estate Vs Subong Tea Estate).

11. On the other hand, it was submitted by the Learned Advocate for the Party No. 1 that the terms of the reference is vague and not specific and though, the reference is for adjudication of the legality or otherwise of the termination of the services of the workman, the alleged dated of such termination has not been mentioned in the schedule of reference and the date of the alleged termination is very crucial, in absence of which it is not possible for effective adjudication of the dispute and on that score, the reference is not maintainable. It was also submitted by the Learned Advocate for the Party No. 1 that in the statement of claim filed by the workman also, there is no specific pleading as to when his services were terminated and on that count also, the reference is to be answered in the negative.

It was further submitted by the learned advocate for the Party No. 1 that though the workman was offered engagement on daily wages basis as per office order dated 31.01.1991, he did not join duty and as such, there is no question of termination of the services of the workman and even for the sake of argument, it is held that the workman worked as per office order dated 31.01.1991 on daily wages, the workman has not adduced any legal evidence on record to show that he had worked for 240 days in the preceding 12 months of the date of termination and the onus to prove such fact is on the workman, but he failed to discharge the onus by adducing necessary evidence and as such, he is not entitled for the benefits of the provisions of Section 25-F of the Act and as per the decision of the commissioner, the production activities of the unit was closed down and even though, the workman did not work after 1988, notice pay and retrenchment compensation was sent to him alongwith the retrenchment

notice dated 09.02.1996 and Party No. 1 did not commit any illegality and the workman is not entitled to any relief.

In support of the contentions, the Learned Advocate for the Party No. 1 placed reliance on the decisions reported in the decisions reported in (2002) 3 SCC-25 (Range Forest Officer Vs. S.T. Hadimani), (2004) 8 SCC-195 (Municipal Corporation, Faridabad Vs. Siri Niwas), (2005) 8 SCC-481 (Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh), (2005) 8 SCC-750 (Surendra Nagar District Panchayat vs. Dahyabhai Amarsingh), (2006) 2 SCC-716 (M.P. State Agro Industries Development Corp. Ltd. vs. S.C. Pandey), (2006) 5 SCC-173 (Municipal Council, Sujanpur vs. Surinder Singh), (2006) 9 SCC-697 (Krishna Bhagyajal Nigam Ltd. vs. Mohd. Rafi), (2006) 9 SCC-132 (Surendranagar Distt. Panchayat vs. Ganga Ben Laljibhai), (2006) 9 SCC-124 Chief Engineer Ranjit Sagar Dam vs. Sham Lal), (2006) 6 SCC-275 (Rajasthan Tourism Development Corporation vs. Intejam Alizafri), (2006) 5 SCC-127 (Nagar Mahapalika vs. State of U.P.), (2006) 1 SCC-106 (R.M. Yellati vs. Asstt. Executive Engineer), (2006) 2 SCC-711 (State of M.P. vs. Arjunlal Rajak), (2007) 13 SCC-343 (Ranip Nagar Palika vs. Babuji Gabhaji Thakore), (2007) 12-172 (State of Maharashtra vs. Dattatraya Digamber Birajdar), 2008 II CLR 1089 (State of Haryana vs. Ramesh Kumar), (2008) 3 SCC-474 (BSNL vs. Mahesh Chand), (2008) 5 SCC-171 (Municipal Corporation, Faridabad vs. Durga Prasad) and (2009) 17 SCC-326 (Ajnala Cooperative Sugar Mills Ltd. vs. Sukhraj Singh).

It is settled beyond doubt by the Hon'ble Apex Court in different judgments including the judgments cited by the Learned Advocate for the party No.1 that where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it is for the claimant to lead evidence to that effect and the workman's affidavit is not sufficient evidence for that purpose.

Keeping in view the principles as mentioned above, now, the present case at hand is to be considered.

12. So far the first contention raised by the Learned Advocate for the party No.1 regarding the non-mention of the date of termination of the workman from services in the schedule of reference and in the statement of claim is concerned, admittedly, the alleged date of termination of the workman has not been mentioned in the schedule of reference. However, in the statement of claim, in paragraph 4, it has been mentioned by the workman that, "Immediately after the receipt of the notice dated 18.11.1993, the party No.1 had not allowed the party No.2 and his co-workers, who had issued notice to party No.1, to resume duty w.e.f. 20.11.1993." In paragraph 05 of the statement of claim, it has been mentioned that, "The party No.2 had approached the party No.1 on 21.11.1993 and subsequently on 22.01.1993, but work was not provided."

In the rejoinder, the workman has specifically in paragraphs 1 and 2 has pleaded that he was orally terminated from services w.e.f. 22.11.1993. From the materials on record, it is found that for non-mention of the date of the termination of the workman in the schedule of reference, it cannot be said that the reference is not maintainable. Hence I do not find any force in the contention raised by the Learned Advocate for the Party No.1 in that regard.

13. To prove that he had worked for 240 days in the preceding 12 months of the date of termination, the workman has given his own evidence on affidavit. Though, the workman has not produced any other evidence in support of his such claim, his evidence has been corroborated by the evidence of the witnesses No.1 and 2 of the party No.1. As already mentioned above, Amitabh Datta, the witness No.1 for party No.1 has stated that the workman worked continuously from 1991 to 1993. Khandeswar Pralhad Gondane, witness No.2 for the party No.1 has stated that the workman worked for more than 240 days in every calendar year.

14. Apart from the oral evidence, the documentary evidence produced by the party No.1 clinches the issue in favour of the workman. The party No.1 has produced and proved the notice of retrenchment dated 09/12/02/1996 issued to the workman as Ext. M-II. In Ext. M-II, it has been mentioned that the workman joined in February, 1991 and worked from February, 1991 to November, 1993 and he is entitled for retrenchment compensation for three years i.e. for 45 days at the rate of 15 days per year. So, it is clear from the materials on record that the workman infact had worked for more than 240 days in the preceding 12 calendar months of the date of his termination i.e. 22.11.1993. It is also found from the material on record that before the termination of the workman from services, the mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him. So, the termination of the workman from services amounts to retrenchment and such termination is illegal.

Applying the principles enunciated by the Hon'ble Courts in the decisions cited by the Learned Advocate for the workman to the case in hand, it is found that the issuance of the retrenchment notice as per Ext. M-II and sending of the demand draft towards retrenchment compensation and one month's wages on 09/10/02/1996 does not cure the illegality of termination of the services of the workman w.e.f. 22.11.1993.

15. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development

Corporation Vs. Gitam Singh) after taking into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal Council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (In charge Officer Vs. Shankar Setty.) have been pleased to hold that:-

“In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.”

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager in 1991, about 23 years back. It is also found that he continued as such till 22.11.1993, when he was terminated from services by party no.1. It is also found that production and marketing activities of the handmade paper unit, Wardha has been completely closed as per the decision of the commission in its 449th meeting held on 25.12.1995. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 75,000/- (Rupees seventy Five thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Handmade Paper Production and Training Centre, Khadi and Village Industries Commission, Wardha in terminating the services of Shri Sudhir V. Khodake is illegal and unjustified. The workman is entitled for monetary compensation of Rs.75,000/- (Rupees seventy five thousand only) in lieu of reinstatement. He is not entitled for any other relief. The party no.1 is directed to pay the monetary compensation

of Rs. 75,000/- to the workman Shri Sudhir V. Khodake within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 percent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1196.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आर्कियोलॉजिकल सर्वे ऑफ इंडिया, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ संख्या 45/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-42011/121/99-आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March , 2014

S.O. 1196.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 45/2000) of the Central Government Industrial Tribunal/Labour Court No. II, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of the Archaeological Survey of India, New Delhi and their workmen, which was received by the Central Government on 24-03-2014.

[No. L-42011/121/99-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-II

Present :- Shri Harbansh Kumar Saxena

ID No. 45/2000

Smt. Shanti Devi &
Smt. Santosh Devi

Versus

Archaeological Survey of India N.D.

AWARD

The Central Government in the Ministry of Labour vide notification No L-42011/121/99- IR(DU) dated 3.3.2000 referred the following Industrial Dispute to this tribunal for the adjudication :-

“Whether the action of the Director General and the Dy. Superintending Horticulturist Division, Archaeological Survey of India, Horticulture Division No. II , New Delhi in stopping from services on verbal orders to Smt. Shanti Devi, Mali and Smt. Santosh Devi , Mali w.e.f 25.10.97 is reasonable , valid , legal and justified? If not, to what relief they are entitled?”

On 19/4/2000 reference was received in this tribunal. Which was register as I.D No. 45/2000 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

Claimants/workmen on 11.07.2000 filed Claim Statement. Wherein they mentioned as follows:-

1. That Smt. Shanti Devi on 23.01.1983 and Smt. Santosh Devi on 10.5.1983 appointed as daily wager Mali in Archeological Survey of India. Their last salary was Rs. 68.60/- per day.

2. That their main work was to look after flowers and plants etc.

3. That during their service tenure they have been sent to different branches for performing their duties.

4. That they afforded no chance to their officers to complaint against them during their service tenure.

5. That they were not provided with appointment Letter, Attendance card, Dress, Medical Facility card etc. by the manager. Against which they orally protested.

6. That applicants made aforesaid demands to managers due to which they became annoyed and they maliciously and in revengeful sprit. They tried to search out a ground to terminate the workmen. Ultimately they illegally terminated workmen on 25.10.1997 Udhana Branch No.2, Safdarjung Madarsa, New Delhi without any reason and prior information.

7. That after termination workmen were harassed on the pretext of re-employment nor promised to be employed.

8. That they made demand against their illegal termination through union. Which was sent through speed post No.5567-68 dated 31.5.1999 no reply of that demand letter was given nor they were re-employed.

9. That they raised Industrial Dispute before Assistant Labour Commissioner (Central) Kasturba Gandhi Marg-110001 but managers has not reinstated workmen. Ultimately Asst. Labour Commissioner sent his report to secretary Labour Department, Labour Ministry Union Government of India which in turn sent to this tribunal for adjudication.

10. That managers has appointed new employees in place of claimants after their termination claimants could not get job inspite of their best efforts and they are still unemployed.

11. That managers have without reason and prior intimation maliciously and illegally terminated the services of the applicants in violation of Sec 25-f Industrial Dispute Act,1947.

12. That Claimants/workmen on the basis of previous continuous services are entitled for reinstatement with back wages because manager has violated the provision of Section 25-F of Industrial Dispute Act, 1947.

13. Claimants/workmen reserve their rights for amendment as per necessity.

On the basis of aforesaid averments claimants prayed for reinstatement with back wages as management violated of provision of 25-F of Industrial Dispute Act, 1947.

In reply to claim statement Deputy Superintending Horti Culturist , Archeological Survey of India filed written statement on 4.1.2001. Wherein he mentioned as follows:-

That Smt. Shanti Devi and Santosh Devi was not appointed Mali on 10.5.83 . As no post of Mali is there in the alleged branch so no process of selection has been made. Smt Shanti Devi was appointed only for 6 days on daily wages to meet out the exigency of grass cutting of lawn. They have not been provided work for 240 days in a calendar year in want of proof allegation of claimants/ workmen are false because there is no post of mali.

That branch Incharge of Archeological Department took work of grass cutting etc from claimants/workmen for about 6 days on daily wages as per mustroll.

No appointment letter dress and medical facility was provided to daily wages claimants/workmen were intimated at the time of engagement for 6 days work only. Hence after 6 days of work their period of work already expires which cannot be turn to be illegal termination. Hence claim of claimants/workmen is baseless & beyond truth. Daily wagers are not entitled for reinstatement with back wages as they were not appointed on any post.

Aforesaid daily wagers suomoto and under instigation instituted a Industrial Dispute . Although they have not been appointed and completed a work of 240 days continuously in a calendar year. That Archeological Survey of India does not earn money. Hence provisions of 25-F of Industrial Dispute Act, 1947 are is in applicable.

That Archeological Survey of India does not come within the meaning of Industry.

On the basis of averment made in Written Statement management prayed dismissal of claim statement.

On 27/2/11 A/R for the workmen Sh. Subhash Chand Dubey filed rejoinder on behalf of workmen. Wherein he denied the allegation of Written Statement.

My Ld predecessors has not framed any issue but proceed to adjudicate the present reference on the basis of schedule wherein questions of determination were as follows:-

“Whether the action of the Director General and the Dy. Superintending Horticulturist Division, Archaeological Survey of India, Horticulture Division No. II , New Delhi in stopping from services on verbal orders to Smt. Shanti Devi, Mali and Smt. Santosh Devi , Mali w.e.f 25.10.97 is reasonable , valid , legal and justified? If not, to what relief they are entitled?”

Workman Smt. Shanti Devi in support of her case filed her affidavit in his evidence on 25/07/2003.

On 2.8.2005 affidavit of Workman was tendered & she was cross-examined on same day. His examination-in-chief and cross-examination is as follows:-

I have filed my affidavit. I have filed my affidavit in my evidence in this case. The facts mentioned in my affidavit are true and correct. My affidavit Ex. WW1/A be read as part of my statement in my evidence. The facts mentioned in my statement are true and correct. I am entitled to the relief claimed and I be granted the same.

XXXX by Gyaneshwar, A/R for management.

I am 46 years of age. My name was not sponsored through Employment Exchange for the employment in question. However, I was called by the office of the respondent concerned. I was given the employment letter at the time of my appointment. The same was taken by management at the time of joining the job in question. I have not filed the same in this case. I had given application for receiving appointment letter but no response was given to the same. I did not keep any copy of the application. I was not medically examined. No police verification was conducted either at the time of my employment or before that. My duty was to do the cleaning work of the Garden. I was appointed employed by Pop Singh, Official of the management. I was not given any termination letter, while my services were dispensed with or terminated. It is incorrect to suggest that I was appointed as causal worker on daily wager on daily wages for doing a particular job and my appointment/engagement came to an end after the work was over. It is incorrect to suggest that there is no provision for giving notice for dispensing or terminating the service of workman under the law. It is incorrect to suggest that I have not worked for 240 days in any year. Vol. I had worked for more than 240 days in a year. It is correct that I had worked during the year w.e.f. 1988 till 1997. It is incorrect to suggest that I had worked for the number of days in each year as indicated in Ex. WW1/

MX 1 to MX-10. It is incorrect to suggest that I am deposing falsely or that I am not entitled to the relief claimed.

Workman Smt. Santosh Devi in support of her case filed her affidavit in his evidence on 18.07.2003

On 2.8.2005 affidavit of Workman was tendered & she was cross-examined on same day. His examination-in-chief and cross-examination is as follows:-

I have filed my affidavit in my evidence in this case. The facts mentioned therein are true and correct and I rely on the same. The same be read as part of my statement in this case. The facts mentioned in my statement of claim are true and correct. I am entitled to the relief claimed. The same be given.

XXXX by Gyaneshwar Advocate, A/R for management.

I am about 50 years old. My husband has died after I joined the service in this case. Again said I am not aware if my husband died prior to my joining the service or after my joining the service. I have mentioned correctly in my affidavit Ex. WW2 in para 3 thereof that my husband expired three year before joined the service. It is correct that I have worked w.e.f 10.1.83 till the year 1997, as mentioned in my affidavit. It is correct that I have six children Vol. that there is gap of one year in the birth of my each child. I do not know how old I was when I gave birth to my first child. I might be 14 or 15 years old at the time of birth of my first child.

I was not sponsored through employment exchange for employment in question. I was given appointment letter. The same was taken back by the management. I had given application to the management for seeking employment. I do not have copy of the application. I was not medically examined after my joining the job. Police verification was not conducted before joining or after joining the job. I do not know the name of the officer who engaged me. I was not given any termination letter. It is incorrect to suggest that I used to be engaged seasonally for weeding out grass etc. and other elements in the Garden. It is incorrect to suggest that the job ended as and when the work ended seasonally. Vol. I was engaged almost continuously and used to work daily even on holidays. It is incorrect to suggest that I am deposing falsely or that I am not entitled to the relief claimed.

Management in support of his case filed affidavit of Sh. N.K. Ahir, Deputy Superintendent, Horticulturist Division II , ASI, New Delhi.

On 15.11.2010 affidavit of Management was tendered & he was cross-examined on same day. His examination-in-chief and cross-examination is as follows:-

I tender in evidence my affidavit by way of examination in chief. It is signed by me at points A & B. It is Ex.MW1/A. The same be read as part of my statement in this case.

XXXX: - By Sh. R.P.S Baghel, A/R for both workmen.

I am posted and holding the authority in the concerned division at Delhi since 2001. I have not got any document exhibited in my affidavit. It is wrong to suggest that I have not seen the attendance record of the two workmen. Smt. Shanti Devi workman joined the management on 4.12.1985 . It is wrong to suggest that Smt. Shanti Devi joined the management on 25.1.1983. It is incorrect to suggest that Smt. Shanti Devi worked continuously right from the beginning till she was stopped from doing the service. It is wrong to suggest that Smt. Shanti Devi started working with the management at 24, Tilak Marg, New Delhi since 25.1.1983. It is correct that Smt. Shanti Devi worked till 25.10.97 but she did not work regularly and worked only as and when we required her services. As and when she was engaged he did work from 9AM to 5 P.M. It is correct that Smt. Shanti Devi worked at various places in Delhi. It is incorrect to suggest that she worked continuously from 25.1.83 to 25.10.97. It is correct that Smt. Shanti Devi worked at various place in Delhi. It is incorrect to suggest that Smt. Shanti Devi did not work only on Sundays and other gazetted holidays and worked continuously otherwise throughout. Likewise, Smt. Santosh Devi started working with us since 1988. It is incorrect to suggest that Smt. Santosh Devi had been working with us a Mali Since 10.01.1983. It is incorrect to suggest that she worked continuously from 10.1.83 to 25.10.97. In fact, she too had worked only on need basis as and when required by us and not regularly. It is incorrect to suggest that she had worked regularly with us.

No notice was required to be given to either Smt. Shanti Devi or Smt. Santosh Devi and as such no notice was given to them before asking them to stop coming to the management as they were merely casual workers. It is wrong to suggest that Smt. Santosh Devi started working since 10.1.1983 in CCA Museum. She did work at various places as and when required by us. As per the recommendations of the 5th Pay Commission and various orders of the Govt.of India, we stated getting the job of the maintenance of the gardens through outsourcing due to shortage of staff. The workmen attendance used to be marked in the muster roll. It is incorrect to suggest that both the workmen did work for more than 240 days in each completed year of their service prior to their dis-engagement. . It is wrong to suggest that I have deposed falsely.

After which on 8/5/2007 no dispute Award was passed by my Ld. Predecessor against which workmen moved an application for setting aside the Award. My Ld. Predecessor on 31.10.07 heard and allowed the application

& set aside the award and fixed 28/1/2008 for cross-examination of MW. On 15.11.2010 statement of MW1 Sh. N.K. Ahir recorded. His cross-examination is also recorded. Management closed his evidence then 15/2/2011 was fixed for argument.

I have heard the arguments of Ld A/R's for the parties on 17.1.14 and perused the pleadings of Claim Statement, Written Statement, Rejoinder and Evidence of the parties and settled law on the points.

Ld.A/R for management placed reliance on principle laid down by their Lordship of Hon'ble Supreme Court in case of Secretary, State of Karnataka and others Versus Uma Devi(3) And Others (2006)4 Supreme Court Cases 1.

Perusal of pleadings and evidence of management shows that management has challenged the jurisdiction of this Tribunal to adjudicate the reference. Even than management has not challenged the reference by way of filing writ-petition in Hon'ble High Court of Delhi. Although available remedy to management was to file writ-petition which has not been availed by the management. Hence management is estopped to challenge on such ground.

So far principle laid down in aforesaid cited ruling cited on behalf of management is concerned, it is relevant to mention here that such ruling is in applicable in the instant case because reference by Labour Ministry to this Tribunal has been made on 3.3.2000 and case of ruling was decided by their Lordship of Hon'ble Supreme Court on 10.04.2006. Hence principle of ruling cannot be applied retrospectively in the instant case.

Perusal of question of determination referred for adjudication is as follows:-

“Whether the action of the Director General and the Dy. Superintending Horticulturist Division, Archaeological Survey of India, Horticulture Division No. II, New Delhi in stopping from services on verbal orders to Smt. Shanti Devi, Mali and Smt. Santosh Devi, Mali w.e.f 25.10.97 is reasonable, valid, legal and justified?

Which in itself indicates that burden of proof is on management. Management to discharge its burden produced MW1 Sh.N.K. Ahir whose evidence is not based on personal knowledge and is based on record available in the office of the management. Even than neither original record nor its photostate copies have been produced by the management witness during his statement in the Tribunal. Nor management subsequently filed those papers in support of testimony of MW1 Sh. N.K. Ahir.

In this background evidence adduced on behalf of management is certainly short of required evidence to prove the aforesaid question of determination. Moreover

Claimants/Workmen adduced their direct evidence which is based on their personal knowledge. Hence their evidence is credible and reliable inwant of rebuttal evidence through which they established the fact that Workman Smt. Shanti Devi was appointed as daily wager Mali Since 23.1.1983 till 25.10.1997 and Workman Smt. Santosh Devi was appointed as daily wager Mali Since 10.5.1983 to 25.10.1997. But management without their fault stopped them from services on its verbal orders.

On the basis of evidence on record this Tribunal has no option to except to decide the aforesaid question of determination in favour of Claimants/Workmen and against Management.

Hence aforesaid question of determination is decided in favour of claimants/Workmen and against management.

In the light of contentions and counter contentions I perused the settled law of Hon'ble Supreme Court on the point of reinstatement and grant of back wages. Which shows that reinstatement is not a necessary consequence wherever termination is held illegal. Depending upon the facts of each case a suitable compensation can be awarded. In Assistant Engineer, Rajasthan Dev. Corporation and Anr Vs. Gitam Singh, (2013) II LLJ 141 Hon'ble Supreme Court has held that reinstatement of workman with continuity of service and 25% back wages was not proper in the facts and circumstances of the case and the compensation of Rs.50,000 (Rs. Fifty Thousand Only) shall meet the ends of justice. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board & Anr AIR 2009 Supreme Court 3004, Hon'ble Supreme Court held thus "the award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded." In catena of Judgments, Hon'ble Supreme Court has taken a view that reinstatement is not automatic, merely because the termination is illegal or in contravention of S-25-F of the Industrial Dispute Act. In Talwara Co-operative credit and service society Limited Vs. Sushil Kumar (2008) 9 SCC 486, Hon'ble Supreme Court held thus, "grant of relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic."

Workmen of the instant case were not appointed by following due procedure and as per rules. They had rendered service with the respondent as a Casual Worker, thus, Compensation of Rs. 50,000 (Rs. Fifty thousand only) by way of damages as compensation to each of the Workman/Claimant by Management after the expiry of period of limitation of available remedy against Award. That will meet the ends of justice.

Thus reference is decided in favour of Workmen/Claimants and against Management.

Award is accordingly passed.

Dated:-04.03.2014

HARBANSK KUMAR SAXENA, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1197.—ऑद्योगिक विवाद अधिनियम, 1947 (1947

का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डिप्टी जनरल मेनेजर एम टी एन एल, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 50/1993) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-42012/58/92-आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March , 2014

S.O. 1197.—In pursuance of Section 17 of the

Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 50/1993) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi, now as shown in the Annexure, in the industrial dispute between the management of the Deputy General Manager, MTNL, New Delhi and their workmen, which was received by the Central Government on 24-03-2014.

[No. L-42012/58/92-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

**BEFORE DR.R.K.YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO.1, KARKARDOOMA COURTS COMPLEX,
DELHI.**

I.D. No. 50/1993

Shri Kapil Dev Tiwari
S/o Sh.Tulsi Ram Tiwari,
R/o 12/30, Nehru Nagar,
New Delhi - 110065.

...Workman

Versus

The Deputy General Manager,
MTNL, 1st Floor, Kidwai Bhawan,
New Delhi-110001.

...Management

AWARD

A daily rated mazdoor was engaged by the Divisional Engineer (Telephones), Department of Telecommunications, Government of India, New Delhi, in November 1982. In November 1985, he was engaged in the office of Divisional Engineer (Telecom) Rajnagar Telephone Exchange, Ghaziabad, Uttar Pradesh. In March 1986, Mahanagar Telephone Nigam Ltd. (in short the Nigam) was

incorporated as a company under the Indian Companies Act. Being a licensee, the Nigam is an accredited representative of Department of Telecommunications, Government of India, New Delhi. The Nigam is responsible for managing and operating telephone services in Delhi and Mumbai. The daily rated mazdoor, who worked in the office of the Divisional Engineer (Telecom) Rajnagar Telephone Exchange, Ghaziabad, Uttar Pradesh, till November 1989, was employed in the office of the Divisional Engineer (Telephone) (ITN-II) in December 1989, where he worked till August 1993.

2. In August 1993, services of daily rated mazdoor were regularized by the Nigam and he took over as regular mazdoor on 10.08.1993. When process of his regularization was pending consideration, he approached the Bharatiya MTNL Karamchari Sangh (hereinafter referred to as the sangh), claiming that duties of clerk were obtained from him while he was being paid as a daily rated mazdoor. The sangh took up his cause and raised a demand for regularization of his services on the post of clerk. Demand raised by the sangh was not conceded to by the Nigam. The sangh raised an industrial dispute before the Conciliation Officer. Since the Nigam contested the claim, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-42012/58/92-IR(DU) New Delhi dated 21.07.1993, with following terms:

“Whether action of the management of Mahanagar Telephone Nigam Ltd. in not designating Shri Kapil Dev Tiwari as Office Assistant with effect from the date of appointment or thereafter is justified? If not, what relief he is entitled to ?”

3. Claim statement was filed by the daily rated mazdoor, namely, Shri Kapil Dev Tiwari, pleading that he was appointed as Stenographer on daily rate basis by Telecommunications Department, Government of India, New Delhi, with effect from 22.11.1982. He was paid @Rs.9.00 per day. The Nigam stepped in the shoes of Telecommunication Department, Government of India, New Delhi, in metropolitan cities, including Delhi. He presents that he had been discharging duties of Stenographer/Office Assistant while wages of an unskilled employee are being paid to him. He is getting less wages in comparison to regular employees, who were discharging duties of Stenographer/Office Assistant. He is discharging duties of Stenographer/Office Assistant since 1982. Benefits such as increments, leave facilities, pension etc. are not granted to him though regular employees are entitled to these benefits. There were clear vacancies of Stenographer/Office Assistant, yet he was not made regular in service. Action of the Nigam is discriminatory and violates principles of natural justice as well as Article 14 and 16 of

the Constitution of India. The Nigam is a State within the meaning of Article 12 of the Constitution and cannot be permitted to adopt different standards with regard to similarly situated employees. The Nigam is under an obligation to minimize inequalities in status, facilities and opportunities amongst individuals of equal status. Hostile discrimination has been meted out to him when his services are neither regularized nor equal wages for equal work are paid to him.

4. Claimant projects that in July 1990, the Nigam conducted examination for recruitment of Stenographers Grade III. He appeared in the test. Though he passed the test, yet with ulterior motive the Nigam cancelled the examination, vide its order dated 06.12.1990. There are huge number of skilled/unskilled employees working with the Nigam from last as many as 10 years, whose services are yet to be regularized. With ulterior motive to deprive him benefit of regularization on the post of Stenographer, his name was kept at serial No.8 of the list circulated vide order dated 22.07.1993, in respect of daily rated mazdoors, who were later on regularized as mazdoors. To frustrate his claim, he was asked to give joining report for the post of regular mazdoor. Since he was not aware that his dispute was in the process of being referred for adjudication to an industrial adjudicator, he gave his joining report. When he came to know that his dispute has been referred for adjudication, he raised a protest in that regard on 22.07.1993 detailing therein that his regularization would be subject to outcome of adjudication by the industrial adjudicator. He claimed that action of the Nigam, in not designating him as Stenographer/Office Assistant, may be held to be illegal, unjustified, besides issuance of directions to the effect that he is entitled to salary/wages and other allowances, equal to regular employees working on the post of Stenographers/Office Assistant, since 1982. He also claims to be treated regular Stenographer/Office Assistant.

5. Claim was resisted by the Nigam pleading that it is a company incorporated under the Indian Companies Act and accredited representative of the Government of India, being licensee for operation, functioning and maintenance of telephone and telex services in metropolitan cities of Delhi and Mumbai. The Nigam had taken over all employees working with the Department of Telecommunication, Government of India in its employment. Claimant, who was working as daily rated mazdoor, was also taken in its employment by the Nigam. A settlement was entered into between the Government and the unions, representing employees working with the Nigam, on 17.04.1987 wherein it was agreed that services of daily rated mazdoors, who had completed seven years of service as on 31.03.1987, would be regularized by the Nigam. The said settlement is sought to be assailed by the claimant by way of raising the dispute, which he cannot do. The Nigam further pleads that the appropriate

Government was not competent to refer the dispute for adjudication in view of the settlement as well as scheme formulated by the Government known as Casual Labourers (Grant of Temporary Status and Regularization) Scheme 1993, which came into operation with effect from 01.10.1993.

6. The Nigam pleads that the claimant was working as daily rated mazdoor. He submitted his joining report as regular mazdoor, on 10.8.1993 on being regularized as such. He was never appointed as Stenographer/Office Assistant nor was asked to perform duties on the aforesaid post. Merely because that he is a graduate, he cannot ask for benefits available to the post of Stenographer/Office Assistant. For appointment to a particular post, one has to offer his candidature, compete alongwith eligible candidates and only then becomes eligible for that post, in case he is found suitable. Claimant had not undergone process of selection for the post of Stenographer/Office Assistant and as such has no right to claim wages or regularization on the aforesaid post. No right vests in the claimant to seek an award in his favour. Claim put forth is not maintainable, hence it may be dismissed, pleads the Nigam.

7. On 03.12.1997, an award was passed by this Tribunal, holding therein that the Nigam is not an industry and as such dispute referred for adjudication is not an industrial dispute.

8. The award was assailed before the High Court of Delhi, vide writ petition No.WP(C) 3493 of 1998, which petition was granted vide order dated 09.05.1993, detailing therein that the Nigam is an industry. Direction was issued to the Tribunal to adjudicate the dispute preferably within next nine months, since it was an old matter.

9. When the matter was remitted to this Tribunal for adjudication, as referred above, parties were called upon to adduce its evidence. Claimant examined himself to substantiate his claim. Shri Sohan Lal, Divisional Engineer, entered the witness box to project case of the Nigam. No other witness was examined by either of the parties.

10. Arguments were heard at the bar. Shri J.P. Singh, authorized representative, advanced arguments on behalf of the claimant. Shri R.N. Singh, authorized representative, raised submissions on behalf of the Nigam. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

11. In his affidavit Ex.WW1/A, tendered as evidence, claimant unfolds that he was appointed as Stenographer on daily rate basis by the Telecommunications Department, Government of India, New Delhi, on 22.11.1982. He was paid wages @ Rs. 9.00 per day. He was regularly discharging his duties as

Stenographer. Certificate dated 21.11.1984 has been issued in that regard, which projects that he was working as Stenographer/Office Assistant since 22.11.1982. He was discriminated by the Nigam, in respect of payment of wages, in comparison to regular employees working on the post of Stenographer/Office Assistant. During the course of his cross examination, he concedes that he was appointed as regular mazdoor, vide appointment letter Ex.WW1/3. He joined on that position on 10.08.1993. He further concedes that post of Office Assistant is a group 'C' post, recruitment for which post is made through Staff Selection Commission. He makes a candid admission that he was never recruited on the post of Office Assistant.

12. In affidavit Ex. MW1/A, tendered as evidence, Shri Sohan Lal deposes that the claimant was working as daily rated mazdoor, whose services were regularized as permanent mazdoor. He took over charge on 10.08.1993 on the post of regular mazdoor. He submitted his joining report in that regard. During the course of his cross examination, he concedes that since beginning, claimant was discharging duties of Office Assistant till the date he was regularized as regular mazdoor.

13. As emerge out of the facts, unfolded by the claimant and Shri Sohan Lal, it is evident that the claimant was engaged as a daily rated mazdoor. He was asked to perform duties of Office Assistant. He was never recruited on the post of Stenographer/Office Assistant. Certificate Ex.WW1/1 brings it to light that duties of Typist/ Stenographer were performed by the claimant with effect from 22.11.1982. Ex.WW1/9 further highlights that the claimant was attached with Additional Divisional Engineer (Telephone) (ITN-II), where he performed clerical duties. In Ex.WW1/11 it has further been mentioned that the claimant was performing clerical duties with the Nigam. Claimant admits that he had not undergone recruitment process for the post of a clerk, though he was performing clerical duties at the instance of authorities of the Nigam.

14. Whether the claimant, who performed clerical duties without being recruited on the post of a clerk, is entitled to be treated alike with a regularly recruited clerk? For an answer to the proposition legal provisions are to be taken note of. Equality before law and equal protection of laws are fundamental rights of every person, ordains Article 14 of the Constitution. The guiding principles laid in Article 14 are that persons, who are similarly situated, shall be treated alike both in privileges conferred and liability imposed, which means that amongst equals the law should be equal and should be equally administered and that like should be treated alike. Article 16 of the Constitution guarantees equality of opportunities for all citizens in matters relating to employment or appointment to any office under the State. What is guaranteed is the equality of opportunity. Like all other employers, Government is also entitled to pick and choose from

amongst a large number of candidates offering themselves for employment. But the selection process must not be arbitrary. The guarantee given by clause (a) of Article 16 of the Constitution will cover (a) initial appointments (b) promotions(c) termination of employment and (d) matters relating to salary, periodical increments, leaves, gratuity, pension, age of superannuation etc. Matters relating to employment or appointments include all matters in relations to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

15. Fundamental rights guaranteed by Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable ground of discretion. Classification is the recognition of the relations, and in making it the Government must be allowed a wide latitude of discretion and judgment. In a way, the consequences of such classification would undoubtedly be to differentiate persons belonging to that class from others. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved. Classification may be made according to the nature of persons, nature of business, and may be based with reference to time.

16. Concept of equality guaranteed by Article 16 of the Constitution is something more than formal equality and enables the underprivileged groups to have a fair share by having more than equal chance and enables the State to give favoured treatment to those groups by achieving real equality with reference to social needs. ‘Protection discrimination’ enabled the State to adopt new strategy to bring underprivileged at par with the rest of the society, by providing all possible opportunities and incentives to them. Therefore a class may be allowed to have preferential treatment in the matter relating to employment or appointment. There cannot be rule of equality between members of separate and independent group of persons. Persons can be classified in different groups, based on in terms of nature of persons, nature of business and with reference to time.

17. Now it would be considered as to whether the claimant is entitled for wages of Office Assistant, on which position he was working since 22.11.1982 till his services were regularized as permanent mazdoor on 10.08.1993. Doctrine of “equal pay for equal work” has been enshrined under Article 39(d) of the Constitution as one of the directive principles of the State policy, requiring the State to secure “equal pay for equal work” for both, men and women. This constitutional goal is capable of attainment through constitutional remedies by way of enforcement of constitutional rights, declares the Supreme Court in Randhir Singh [1982(1) LLJ 344]. In G. Sreenivasa Rao

[1989(2) LLJ 149], the Apex Court announced that right to “equal pay for equal work” is an accompaniment of the equality clause enshrined in Article 14 and 16 of the Constitution of India. Nevertheless, abstract doctrine of “equal pay for equal work” cannot be read in Article 14. Reasonable classification, based on intelligible criteria having nexus with the object sought to be achieved, is permissible.

18. In GRIH KALYAN KENDRA WORKERS UNION [1991(1) LLJ 349] Apex Court had gone to the extent of saying that “equal pay for equal work” has assumed the status of fundamental right in service jurisprudence having regard to the constitutional mandate of equality in Articles 14 and 16 of the Constitution. It was pronounced therein that it has ceased to be a judge made law as it is the part of the constitutional philosophy which ensures a welfare socialistic pattern of State providing equal opportunity to all and equal pay for equal work for similarly placed employees of the State. The principles do not apply to the State only but also applies to the State instrumentalities.

19. In 1976, Equal Remuneration Act 1976 was enacted to implement provisions of Article 39(d) of the Constitution. Construing provisions of that Act, Supreme Court in AUDREY D’COSTA [1987(1) LLJ 536] pronounced that the Act does not permit the management to pay to a section of its employees, doing the same work or work similar in nature, lower pay contrary to the provisions of section 4(1) of the Act only because it is not able to pay equal remuneration to all. The Court further observed that the applicability of the Act does not depend upon the financial ability of the management to pay equal remuneration as provided by it.

20. In deciding whether the work is the same or is broadly the same, the Nigam should take a broad view and also adopt a broad approach in ascertaining whether any differences are of practical importance because from the subject of ‘similar work’ implies difference in detail. Actual duties performed should be looked into and not those that are theoretically possible. Elaborating the concept of “equal pay for equal work” and its application, the Apex Court in Randhir Singh (Supra) observes as follows:-

“Where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same *** and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional

avenue for officers of the lower grade. The higher qualification for higher grade, which may be either academic qualification or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of “equal pay for equal work” would be an abstract doctrine not attracting Article 14 if sought to be applied to them”.

21. In Delhi Veterinary Association (AIR 1984 SC 1221), the Supreme Court ruled that apart from the nature of work, the pay structure should reflect many other values and observed that the employer should follow certain basic principles in fixing the pay scales of various posts and cadres in the Government service. The degree of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the task, hazard attendant on work and fatigue involved are, according to the Third Pay Commission, some of the relevant factors which should be taken into consideration in fixing pay scales. The method of recruitment, the level at which the initial recruitment is made in the hierarchy of service or cadre, minimum educational and technical qualifications prescribed for the post, the nature of dealings with the public, avenues of promotion available and horizontal and vertical relativity with other jobs in the same service or outside are also relevant factors, announced the Court.

22. In JP Chaurasia [1989 (1) LLJ 309], the Apex Court, elaborating the same theme, ruled that apart from the nature of work or volume of the work done the other relevant factors to be taken into account, are ‘evaluation of duties and responsibilities of the respective posts’. In Hari Narain Bhowal [1995(II) LLJ 328], the Apex Court pronounced that the principle of “equal pay for equal work” can be enforced when claiming persons satisfy the Court that not only the nature of work is identical but in all other respects they belong to the same class and there is no apparent reason to treat “equals as unequal”.

23. In Ram Ashray Yadav [1996(II) LLJ 92], the Apex Court observed that principles of “equal pay for equal work” will not apply where qualification prescribed, mode of recruitment and the nature of duties are different for regular employees and a temporary employee. The claim of temporary Investigator-cum-Computer for payment of salary at par with the regular Investigator-cum-Computer was discarded by the Court in the said case. However classification of officers into two groups, namely, deputationists and non-deputationists, for paying different rates of special pay was held to be not permissible under Article 14 and 16 of the Constitution, as it did not bear any rational relation to the objects of the classification. See M.P. Singh (A.I.R. 1987 S.C. 485).

24. In M.R. Ganesh Babu [2002 (4) SCC 556], the Apex Court while dealing with the same principles, opined

that principle of equal pay is dependant upon the nature of work done. It cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. It was held that the judgment of administrative authorities concerning the responsibilities which are attached to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned, which if arrived at is bona fide, reasonably and rationally, was not open to interference by the Court.

25. In Tilak Raj [2003 (6) SCC 123], the Apex Court observed that the principle of “equal pay for equal work” is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. It has been reiterated that this is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. It has been emphasized that the problem about equal pay cannot always be translated into a mathematical formula.

26. In Charanjit Singh [2006 (9) SCC 321], the Apex Court has reiterated that the doctrine of “equal pay for equal work” is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principle of “equal pay for equal work” has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. Enumerating number of factors, it may not warrant the application of the principle of “equal pay for equal work”, it has been held that since the said principle requires consideration of various dimensions of a given job, normally the applicability of this principle must be left to be evaluated and determined by an expert body and the court should not interfere till it is satisfied that the necessary material on the basis of which the claim is made is available on record with necessary proof and that there is equal work of equal quality and all other relevant factors are fulfilled.

27. In Surjit Singh [2009(123) FLR 38] Apex Court was confronted with the proposition as to whether the persons employed as daily wagers in different capacities by Public Health Department of State of Punjab were entitled for “equal pay for equal work” to that of the employees who were appointed against regular posts, by following process of recruitment. It was ruled therein that grant of benefit of doctrine of “equal pay for equal work” depends upon a large number of factors, including equal

work, equal value, source and manner of appointment, equal identify of group and wholesale or complete identity with the employee with whom equality is claimed. The same threads of thoughts were there in Ramesh Chandra Bajpai [2009(123) FLR 525] wherein the Apex Court ruled that similarity in the designation or nature or quantum of work is not determinative of equality in the matter of pay scales. It was emphasized that the Court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts.

28. Relying on above legal precedents, it would be considered as to whether there is complete and wholesale identify between the claimant and an Office Assistant, recruited by the Nigam following recruitment process. Answer lies in negative. Claimant was engaged as a daily rated mazdoor. Subsequently, his services were regularized as regular mazdoor, on which post he took charge on 10.08.1993. Admittedly, the Nigam started taking job of Office Assistant from him. In case he would have made a lapse in performance of that job, the authorities could not hold him accountable, since he was not a holder of that post. The claimant was immune from rigours of disciplinary action and responsibility. It is evident that the claimant did not have any identity not to talk of wholesale identity with a Stenographer/Office Assistant, who was engaged following recruitment process. Responsibility assigned to the claimant cannot be said to be of equal value with that of holder of post of Stenographer/Office Assistant on permanent basis. Mere factor that the work of the Office Assistant was taken would not put him at par with an Office Assistant appointed, following proper recruitment process. Educational qualification, experience, method of recruitment and promotion to different categories of posts of clerk nowhere tallies with the factors surrounding the claimant. Hence, it cannot be said that the claimant was in complete and wholesale identity with an Office Assistant regularly appointed by the Nigam. In such a situation the claimant cannot invoke the doctrine of “equal pay for equal work”. The Nigam has not committed any illegality when wages of an Office Assistant, appointed by following recruitment rules, were not paid to him.

29. Claimant relies on precedents in C.P. Sebastian [2009 (14) SCC 360], Krishna Kant [1995 (5) SCC 75], Dhirendera Chamoli [1986 (1) SCC 637], Surinder Singh [1986 1 SCC 639], Bhagwan Dass [1987 (4) SCC 634], Pooran Chandra Pandey [2007 (11) SCC 92], Charanjit Singh [2008 (1) SCC 321] and Mohd. Khursheed Anwar [2010 (7) SCC 739] to claim equal pay as that of an Office Assistant, recruited by the Nigam in consonance with the rules. Since

facts of the present controversy are distinct and different, aforesaid precedents nowhere come to his rescue.

30. Appointment in Govt. service may be on probation, in temporary capacity or permanent in nature. At the cost of repetition it is said that the claimant was appointed by the Nigam as regular mazdoor on 10th of August, 1993. Prior to that date he was engaged as daily rated mazdoor. Work of Stenographer/Office Assistant was taken from him by the Nigam since 22.11.1982 till 10.08.1993. The claimant wants that he may be designated as Stenographer/Office Assistant. In case his claim is granted it would amount to a back door entry of the claimant on that post. Even by any stretch of imagination it cannot be said that the claimant was irregularly appointed on the post of Stenographer/Office Assistant. A person who has been engaged as a daily rated mazdoor cannot claim to have been appointed on the post of Stenographer/Office Assistant. It is a settled legal position that an appointment on a post can be made by following a recruitment process, in consonance with rules. In Uma Devi [2006 (4) SCC 1] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workmen to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell. The Court ruled thus:

“With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent, the distinction between regularization and making permanent, was not emphasized here—can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in Piara Singh [1992(4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent”.

31. In P.Chandra Shekhara Rao and Others [2006 (7) SCC 488] the Apex Court referred Uma Devi’s Case (Supra) with approval. It also relied the decision in a Uma Rani [2004 (7) SCC 112] and ruled that no regularization is

permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In Indian Drugs & Pharmaceuticals Ltd. [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment cannot be relaxed and court cannot direct regularization of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

32. In Uma Devi (supra) it was laid that “when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularization of services of the claimants can be ordered, since it would amount to back door entry into Government job”.

33. In the light of legal dictum, facts of the present controversy would be scanned again. The claimant was not at all appointed to the post of Stenographer/Office Assistant, not to talk of irregular or illegal appointment on the post. After his engagement as daily rated majdoor, clerical duties were taken from the claimant. Mere fact that the claimant performed clerical duties would not enable him to lay claim for being designated as Stenographer/Office Assistant. For grant of a relief of being designated as Stenographer/Office Assistant he had to show that there was right in his favour for being appointed on that post. On Government job an appointment is to be made strictly on the basis of invitation of applications from amongst eligible candidates, completion of selection process on the basis of criteria and rules laid down in that regard and the incumbent being found to be meritorious. Any appointment in violation of constitutional scheme of equality would be wholly illegal and without jurisdiction. For these reasons it is announced that the claimant is not

entitled to be designated as Stenographer/Office Assistant. His claim is liable to be discarded on that count too.

34. For consideration of aspects of social justice, the Tribunal has to keep in mind that the Industrial Disputes Act, 1947 (in short the Act) is a beneficiary legislation calculated to ensure social justice to both employers and employees and advance progress of industry by bringing harmony and cordial relationship between the parties. The Act empowers adjudicating authorities to abrogate conditions in contract of employment, in the interest of social justice. Social and economic justice is ultimate ideal of industrial adjudication. Social and economic justice has been given place of pride in our Constitution and doctrine of absolute freedom of contract has thus to yield to the higher claims for social justice. See Raibahadur Deewan Badri Das [1962 (II) LLJ 366].

35. Social justice is not based on contractual relations and is not to be enforced on principles of contract of service. It is something outside these principles and invoked to do justice without a contract to back out. Reference can be made to precedent in Rashtriya Mill Mazdoor Sangh [1960 (II) LLJ 263]. In J.K. Cotton Spinning & Weaving Mills Company Ltd. [1963 (II) LLJ 435] the Apex Court ruled that industrial disputes are to be adjudicated based on the concept of social justice. It would be expedient to reproduce the observations made by the Apex Court which are extracted thus:

“In our opinion the argument that the considerations of social justice are irrelevant and untenable in dealing with industrial disputes, has to be rejected without any hesitation. The development of industrial law during the last decade and several decisions of this court in dealing with industrial matters have emphasized the relevance, validity and significance of doctrine of social justice..... Indeed the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claim of social justice in dealing with industrial disputes. The concept of social justice is not narrow or one sided, or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic idea of socio economic equality and its aim is to assist the removal of socio economic disparities and inequalities”.

36. In Ahmedabad Manufacturing and Calico Printing Company Ltd. [1972 (II) LLJ 165] the above principles were reiterated by the Apex Court. Therefore, the law laid down by Apex Court makes it clear that the industrial adjudication cannot and should not ignore the

claims of social justice. Same views were expressed in Basti Sugar Mills Company Ltd. [1978 (II) LLJ 412]. Therefore this Tribunal has to consider the case on the touch stone of social justice also.

37. As emerge out of Ex.W1/1. Ex.WW1/9 and Ex.WW1/11, the Nigam had taken work of Office Assistant from the claimant. While working as daily rated mazdoor, claimant had neither any lien on that position nor he was a civil servant at that time. In such a situation, Fundamental Rules were not applicable to him. He could not project a case to get accolade of principles of law laid down in Vijay Pal Singh [1997(10) SCC 260]. However, as projected by him, he was being paid Rs.9 per day as his wages. These facts project that the claimant was being paid minimum wages, notified by the appropriate Government from time to time. The appropriate Government notifies minimum wages for unskilled, semi-skilled and skilled workmen. It also notifies wages for matriculate clerk and graduate clerk. As pointed out by the claimant, he was a graduate. The Nigam nowhere disputes his qualification as well as performance of clerical duties by him.

38. When duties of Office Assistant were taken, in that situation, applying principles of social justice, I am of the view that the claimant is entitled to minimum wages for the category of graduate clerk from 22.11.1982 till 10.08.1993. Therefore, it is ruled that though the claimant is not entitled for equal pay as that of an incumbent holding post of an Office Assistant on regular basis, yet the Nigam is under an obligation to pay minimum wages notified for graduate clerk by the appropriate Government, for the period from 22.11.1982 till 10.8.1993. Since he was paid minimum wages of unskilled mazdoor he would be entitled to difference of minimum wages for the category of graduate clerk and unskilled majdoor, for the period referred above. The difference of minimum wages, as held above, which would be paid by the Nigam within a period of three months from the date the award becomes enforceable under section 17A of the Act. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated 03-03-2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 26 मार्च, 2014

का.आ. 1198.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ जनरल मैनेजर, भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, भुबनेश्वर के पंचाट (संदर्भ संख्या 22/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-03-2014 को प्राप्त हुआ था।

[सं. एल-40012/104/2012-आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th March , 2014

S.O. 1198.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 22/2013) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Chief General Manager, Bharat Sanchar Nigam Limited & Others and their workmen, which was received by the Central Government on 26-03-2014.

[No. L-40012/104/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri J. Srivastava,

Presiding Officer, C.G.I.T.-cum-Labour

Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE No. 22/2013

Date of Passing Order – 12th August, 2013

Between :

3. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Orissa Telecom Circle, PMG Square,
Bhubaneswar (Orissa).
4. Shri Shakti Prasad Ray,
M/s. Shakti Electricals,
N/4, 148, IRC Village Nayapalli,
Bhubaneswar (Orissa) - 15

... 1st Party-Managements.

(And)

Shri Ananta Swain,
AC Operator, BSNL,
Telephone Exchange, PKG AC Plant,
B.J.B. Nagar, Bhubaneswar (Orissa)

... 2nd Party-Workman.

Appearances:

None. ... For the 1st Party-
Managements

None. ...For the 2nd Party-
Workman

ORDER

Case taken up. None of the parties is present. The 2nd Party-workman was required to file his statement of claim in pursuance of the order of reference within fifteen days of the receipt of the order. But the 2nd party-workman has failed to file any statement of claim neither in pursuance of the order of reference nor having been noticed twice first on 6.5.2013 by ordinary post and second on 1.7.2013 by regd. post by this Tribunal. This reference was received in this Tribunal on 1.4.2013 having been referred by the Government vide its letter dated 26.2.2013. The statutory mandate is to decide the dispute within three months of the receipt of the reference. A period of more than four months has expired, but the 2nd Party-workman has not shown the least interest in prosecuting his case either by putting in appearance or by filing his statement of claim. Without pleadings of the parties the matter under dispute cannot be adjudicated. It might be that the 2nd Party-workman has settled his dispute with the 1st Party-Management amicably out of the court. But instead of passing a no-dispute award it would be expedient in the interest of justice to return the reference unanswered to the Government for taking necessary action at its end.

2. I order accordingly and return the reference unanswered to the Government for taking necessary action at its end.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 मार्च, 2014

का.आ. 1199.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रोजेक्ट डायरेक्टर नेशनल हाइवे अथॉरिटी ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुबनेश्वर के पंचाट (संदर्भ संख्या 04/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-03-2014 को प्राप्त हुआ था।

[सं. एल-42025/03/2013-आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th March, 2014

S.O. 1199.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 04/2014) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of the Project Director, National Highways Authority of India and their workmen, which was received by the Central Government on 26-03-2014.

[No. L-42025/03/2013-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR****Present:**

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE No. 4/2014

Date of Passing Order – 26th February, 2014

Between :

1. The Project Director,
National Highways Authority of India,
1st Floor, SETU Bhavan, Nayapalli,
Unit-VIII, Bhubaneswar.
2. The Management of Egle Infra Ltd.,
Tool Plaza, Gangapada,
Dist. Khurda.

...1st Party-Managements
(And)

Shri Sapan Kumar Patra,
S/o. Debendra Patra,
Vill. Chandipur,
Po. Velora, Ps. Basta,
Dist. Baleswar.

...2nd Party-Workman

Appearances:

None. ... For the 1st Party-
Managements.

Shri Sapan Kumar Patra ...For Himself the
2nd Party-Workman.

ORDER

Case presented today before me. The 2nd Party-workman is present in person. The 1st Party-Management No. 1 and 2 are absent.

The case is at initial stage. However notices have been issued to the 1st Party-Managements. The 2nd Party-workman on 20.02.2014 has moved a petition before this Tribunal that an amicable settlement has been arrived at with the company and the company has agreed to re-appoint him and reinstated him in his previous service. So he is not willing to continue with the case and permission to withdraw the case be granted.

2. I have heard the 2nd Party-workman. He still wants to withdraw the case on the assurance of the company to re-appoint him. I find no legal impediment in allowing the petition. Therefore the petition to withdraw the case is allowed. The 2nd Party-workman is permitted to withdraw the case.

3. The application filed under section 2-A of the Industrial Disputes Act, 1947 is accordingly dismissed as withdrawn.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 28 मार्च, 2014

का.आ. 1200.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हिन्दुस्तान पेपर कॉर्पोरेशन लिमिटेड, कागजनगर, असम के नागांव पेपर मिल के कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट, 30.03.2014 से एक वर्ष की अवधि के लिए लागू रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

(1) पूर्वोत्क स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;

(2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदर्भ अंशदानों के आधार पर हकदार हो जाते हैं;

(3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;

(4) उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात् उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;

(5) निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उपधारा (1) के अधीन नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या निगम का इस नियमित प्राधिकृत कोई अन्य पदधारी;

(i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टियों को सत्यापित करने के प्रयोजनार्थ; अर्थात्

(ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथा अपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

(iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन

किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा:-

(क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त अधिकारी या अन्य पदधारी इस अधिनियम के प्रयोजनार्थ आवश्यक समझता है; अथवा

(ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

(ग) प्रधान या आसन्न नियोजक की, उसके अधिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने के युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;

(ङ.) यथानिर्धारित अन्य शक्तियों का प्रयोग करना।

(6) विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी

[सं. एस-38014/04/2013-एस.एस-I]

सुभाष कुमार, अवर सचिव

New Delhi, the 28th March, 2014

S.O. 1200.—In exercise of the power conferred by section 88 read with section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of Nagaon Paper Mill of Hindustan Paper Corporation Ltd. Assam from the operation of the said Act. The exemption shall be effective w.e.f. 30.03.2014 for a period of one year.

2. The above exemption is subject to the following conditions namely :—

(1) The aforesaid establishment wherein the employees are employed shall maintain a register showing the name and designation of the exempted employees:

(2) Notwithstanding the exemption, the employees shall continue to receive such benefits under the said Act

to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;

(3) The contributions for the exempted period, if already paid, shall not be refundable;

(4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) Any Social Security Officer appointed by the Corporation under Sub-section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of:-

- (i) Verifying the particulars contained in any returned submitted under sub-section (1) of section 44 for the said period; or
- (ii) Ascertaining whether register and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
- (iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
- (iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to :
 - (a) Require the principal or immediate employer to furnish to him such information as he may consider necessary for the purpose of this Act; or
 - (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to

him such information as he may consider necessary; or

- (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or
- (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,
- (e) exercise such other powers as may be prescribed.

6. In case of disinvestment/corporation, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/ 04/2013-SS-I]

SUBHASH KUMAR, Under Secy.

नई दिल्ली, 28 मार्च, 2014

का.आ. 1201.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हिन्दुस्तान एन्टीवॉयेटिक्स लिमिटेड, पिम्परी, पुणे के कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट, 30.03.2014 से एक वर्ष की अवधि के लिए लागू रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

- (1) पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जाएंगे;
- (2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदर्भ अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने/स्थापना का नियोजन उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य

बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;

(5) निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;

- (i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टियों को सत्यापित करने के प्रयोजनार्थ; अथवा
- (ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथा अपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
- (iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक, द्वारा दिए गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु में पाने का हकदार बना हुआ है या नहीं; या
- (iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखानों के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा:-
- (क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त अधिकारी या अन्य पदधारी इस अधिनियम के प्रयोजनार्थ आवश्यक समझता है; अथवा
- (ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या
- (ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
- (घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;
- (ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना।

(6) विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[सं. एस-38014/15/2013-एस.एस-1]

सुभाष कुमार, अवर सचिव

New Delhi, the 28th March, 2014

S.O. 1201.—In exercise of the power conferred

by section 88 read with section 91-A of the Employees State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of Hindustan Antibiotic Ltd., Pimpri, Pune from the operation of the said Act. The exemption shall be effective w.e.f 30.03.2014 for a period of one year.

2. The above exemption is subject to the following conditions namely:-

(1) The aforesaid establishment wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees:

(2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;

(3) The contributions for the exempted period, if already paid, shall not be refundable;

(4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees, State Insurance (General) Regulations, 1950;

(5) Any Social Security Officer appointed by the Corporation under Sub-Section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of :-

- (i) Verifying the particulars contained in any return submitted under Sub-section (1) of Section 44 for the said period, or
- (ii) Ascertaining whether registers and records were maintained as required by the Employees, State Insurance (General) Regulations, 1950 for the said period; or
- (iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or

(iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to:

- (a) require the principal or immediate employer to furnish to him such information as he may consider necessary for the purpose of this Act; or
- (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or
- (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or
- (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,
- (e) exercise such other powers as may be prescribed.

(6) In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/15/2013-SS-I]
SUBHASH KUMAR, Under Secy.